

**Kurdistan Regional Government**

**Ministry of Planning**

**Standard Bidding Documents for Works**

**June 2016**

PROCUREMENT DOCUMENTS

**Issued on …………...**

**Implementation of Civil Works via Competition among Construction Companies**

***[Insert Title and brief description of Works]***

**Tender No: \_\_\_\_\_\_\_\_\_\_\_ *[Insert Tender number]***

**Project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Insert name of Project, if applicable]***

**Contracting Authority/Employer: \_\_\_\_\_\_\_\_\_\_\_\_ *[Insert complete name]***

**Standard Bidding Documents for Works**

**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. Bid Data Sheet (BDS)**

This Section includes provisions that are specific to each procurement and that supplement Section I, Instructions to Bidders.

**Section III. Evaluation and Qualification Criteria**

This Section includes the criteria to determine the lowest evaluated bid, extent of its compliance to the specifications and substantial responsiveness to the conditions, as well as the qualification requirements that the Bidder should have to perform the contract.

**Section IV. Bidding Forms**

This Section includes the forms, Priced Bills of Quantities (BOQs) and the bid security which is to be submitted by the Bidder as part of his Bid.

**PART 2 – WORKS REQUIREMENTS (EMPLOYER)**

Includes the following section:

**Section V. Works Requirements (Employer)**

This Section contains the Specification, the Drawings, and supplementary information that describe the Works to be procured.

**PART 3 – Contract**

Includes the following sections:

**Section VI. General Conditions of Contract (GCC)**

This Section contains the general clauses to be applied in every contract. The text of the clauses in this Section shall not be modified.

**Section VII. Special Conditions of Contract (SCC)**

This Section consists of Contract and Specific Provisions which contains clauses specific to each contract. The contents of this Section modify or supplement the General Conditions – Section VI, and shall be prepared by the Employer.

**Section VIII Contract Forms**

This Section contains forms which, once completed, will contain corrections and amendments, as allowed for by the ITB, GCC and SCC, to the accepted bid.

The forms for **Performance Security** and **Advance Payment Security**, when required, shall only be completed by the successful Bidder after contract award.

**Attachment: Form of Invitation for Bids**

PART 1 – Bidding Procedures

Section 1 - Instructions to Bidders

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Section I - Instructions to Bidders

# A. General

## 1. Scope of Bid

* 1. In connection with the Invitation for Bids specified in the Bid Data Sheet (BDS), the Employer, as specified in the **BDS**, issues these Bidding Documents for the procurement of the Works as specified in Section V, Works Requirements. The name, identification, and number of lots (contracts), if applicable, of this bidding are specified in the **BDS**.

The following definitions shall prevail throughout this Bidding Document:

(a) the term “**in writing**” means any written or digital expression that can be read or re-copied and communicated later, and may cover the information transmitted or stored electronically.

(b) The words indicating the singular also include the plural and words indicating the plural also include the singular.

(c) “day” means calendar day.

## 2. Corrupt and Fraudulent Practices

2.1 The Employer requires bidders and awarded contractors to upload the ethical criteria during competition and implementation of the contract. In this respect and to achieve this policy:

1. The Employer adopts the definitions in paragraphs (16) to (20) of Article (1) of the Regulation of Public Procurement 2 of 2016.
2. The Employer has the right to reject the recommendation for award if the bidder is proved to be involved directly or through an intermediary in any of the corruption practices during completion for the specific contract.
3. The Employer has the right to sanction (individuals or companies) including debarment in accordance with the Procedures for Debarment in the case of their proven involvement directly or through an intermediary in any of the corruption practices during competition or implementation of a public-financed contract.
4. The Employer has the right to include, in the bidding documents and contracts, a condition that binds the bidders to permit the Employer or its assigned auditors to inspect or audit their accounts and records or any documents relating to submission of bids and implementation of contracts.

2.2 Additionally, the bidders should be aware of the obligations listed in Paragraph (73-2) of the GCC to this effect.

## 3. Eligibility Requirements of Bidders

3.1 A Bidder may be a firm that is a private entity, or a government-owned company, or any combination of these in the form of a joint venture (JV), under an existing agreement, or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution. Unless specified in the **BDS ITB 3-1**, there is no limit assigned by the Employer on the number of members in a JV.

3.2 A Bidder shall not be in a situation of a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest situation for the purpose of this bidding process, if the Bidder:

* + 1. directly or indirectly controls, is controlled by or is under common control with another Bidder;
		2. receives or has received any direct or indirect subsidy from another Bidder;
		3. has the same legal representative as another Bidder;
		4. has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process;
		5. Participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid;
		6. or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of this tender;
		7. or any of its affiliates has been hired or is proposed to be hired by the Employer as Engineer for the implementation of the works that are the subject of this tender;
		8. would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the **BDS** that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm;
		9. has a close business or family relationship with a professional staff of the project implementing agency who: (a) is directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (b) would be involved in the implementation or supervision of such contract.

3.3 A Bidder may have the nationality of any country, except for the country in which its individuals and companies have been debarred in accordance with the prevailing legislations in the Kurdistan Region. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its registration documents. This condition also shall apply to the determination of the nationality of sub-contractors or sub-consultants for any part of the Contract that is the subject of this tender

3.4 Bidders shall provide such evidence of continued eligibility satisfactory to the Employer’s requirements

3.5 Any Bidder that has been listed on the debarment list published by the Ministry of Planning on its website indicated in the **BDS**, shall be prohibited from participation in public tenders.

## 4. Eligible Goods and Relating Services

4.1 The materials and relating services should be from Eligible Countries. The Employer has the right to request the Bidder to present supporting evidence to this effect.

4.2 For the purpose of this Clause, the definition of “Goods” covers various materials like raw materials, equipment, machinery and industrial facilities constituting Works, and also covers the “Related Services” like insurance, installation, training and maintenance

4.3 The term “Origin” refers to the country in which the goods are extracted or produced or cultivated or treated or fabricated or that country in which, through fabrication or treatment or assembly, various commercial goods are produced that substantially differ in characteristics from their constituents

# B. Contents of Bidding Document

## 5. Sections of Bidding Document

5.1 The Bidding Document consists of three Parts*,* which include all the Sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITB 7.

**PART 1 Bidding Procedures**

Section I - Instructions to Bidders (ITB)

Section II - Bid Data Sheet (BDS)

Section III - Evaluation and Qualification Criteria

Section IV - Bidding Forms

**PART 2 Works / Employer Requirements**

Section V – Works / Employer Requirements

**PART 3 Contract**

Section VI - General Conditions of Contract (GCC)

Section VII – Special Conditions of Contract (SCC)

Section VIII - Contract Forms

5.2 The invitation for Bids issued by the Employer is not part of the Bidding Document.

5.3 The Bid should be submitted by the bidder who obtained the bidding documents directly from the Employer.

5.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Failure to furnish with its bid all information and documentation as is required by the Bidding Documents, may result in rejection of the bid.

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

6.1 A Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer’s address specified in the **BDS** or raise its inquiries during the pre-bid meeting if provided for in accordance with ITB 6.1. The Employer shall respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids within a period specified in the **BDS**. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Documents, including a description of the inquiry but without identifying its source. Should the clarification result in changes to the essential elements of the Bidding Documents as a result of those inquiries, the Employer shall amend the Bidding Documents following the procedure under ITB 7 and ITB 21.2

6.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder’s own expense.

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

6.4 If so specified in the **BDS**, the Bidder’s designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage

6.5 The Bidder is requested, to submit any questions in writing, to reach the Employer within reasonable time period before the pre-bid meeting.

6.6 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have purchased the Bidding Documents. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 7 and not through the minutes of the pre-bid meeting. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

## 7. Amendment of Bidding Document

7.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Documents by issuing addenda.

7.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Document directly from the Employer.

7.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 21.2

# C. Preparation of Bids

## 8. Cost of Bidding

8.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid.

## 9. Language of Bid

9.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language specified in the **BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation in the language specified in the **BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern

## 10. Documents Comprising the Bid

10.1 The Bid shall comprise the following:

1. Letter of Bid in accordance with ITB 11;
2. completed Priced Bills of Quantities, in accordance with ITB 11 and 13: as specified in the **BDS**;
3. Bid Security, in accordance with ITB 18.1;
4. alternative bids, if permissible, in accordance with ITB 12;
5. written confirmation authorizing the signatory of the Bid to commit the Bidder authenticated by a Public Notary, in accordance with ITB 19;
6. documentary evidence in accordance with ITB 16 establishing the Bidder’s qualifications to perform the contract if its Bid is accepted;
7. Technical Proposal in accordance with ITB 15; and
8. any other document required in the **BDS**.

10.2 In addition to the requirements under ITB 10.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement.

## 11. Letter of Bid and Priced Bills of Quantities

11.1 The Letter of Bid shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be filled out without any alterations to the text, and no substitute forms shall be accepted. All blank spaces shall be filled in with the information requested.

11.2 The Bidder shall fill in the Priced Bills of Quantities included in Section IV – Bid Forms.

## 12. Alternative Bids

12.1 Unless otherwise specified in the **BDS**, alternative bids shall not be considered.

12.2 If specified in the **BDS**, alternative times for completion are explicitly invited; a statement to that effect should be included to indicate the method of evaluating different times for completion.

12.3 Except as provided under ITB 12.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Document must first price the Employer’s design as described in the Bidding Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.

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

## 13. Bid Prices and Discounts

13.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Priced Bills of Quantities shall conform to the requirements specified below.

13.2 The Bidder shall submit a bid for the whole of the works described in ITB 1.1 by filling in prices for all items of the Works, as identified in Section IV. Bidding Forms. In case of admeasurement contracts, the Bidder shall fill in rates and prices for all items of the Works described in the Priced Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Priced Bill of Quantities.

13.3 The price to be quoted in the Letter of Bid, in accordance with ITB 11.1, shall be the total price of the bid, excluding any discounts offered.

13.4 The Bidder shall quote any unconditional discounts and the methodology for their application in the Letter of Bid.

13.5 Unless otherwise provided in the **BDS**, the prices quoted by the Bidder shall be fixed throughout the construction period and shall not be subject to change under any circumstance. If the prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data in Section IV- Bidding Forms and the Employer may require the Bidder to justify its proposed indices and weightings.

13.6 ITB 1.1 specifies that bids are invited for individual lots or for any combination of lots. Bidders wishing to offer discounts for the award of more than one lot shall specify in their bid the price reductions applicable to each lot. Discounts shall be submitted in accordance with ITB 13.4, provided the bids for all lots are submitted and opened at the same time.

13.7 All duties, taxes, and other levies payable by the Contractor in the Kurdistan Region if awarded the Contract, as of the date of the 14th day prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the Bidder.

## 14. Currency (ies) of Bid and Payment

14.1 The currency (ies) of the bid and the currency (ies) of payments shall be as specified in the **BDS**.

14.2 The Bidder shall be required by the Employer to justify, to the Employer’s satisfaction, its local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data are reasonable, in which case a detailed justification of the foreign currency requirements shall be provided by Bidder.

## 15. Documents Comprising the Technical Proposal

15.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, Bidding Forms, in sufficient detail to demonstrate the adequacy of the Bidders’ proposal to execute the Works within the completion time.

## 16. Documents Establishing the Qualifications of the Bidder

16.1 In accordance with Section III, Evaluation and Qualification Criteria, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms.

16.2 If a margin of preference applies as specified in accordance with ITB 32.1, domestic Bidders applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for domestic preference specified in accordance with ITB 32.1.

## 17. Period of Validity of Bids

17.1 Bids shall remain valid for the period specified in the **BDS** after the bid submission deadline date prescribed by the Employer in accordance with ITB 21.1. A bid valid for a shorter period shall be rejected by the Employer

17.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their bids. In such case, the request and the response shall be made in writing. If a bid security is requested, it shall also be extended for the same period. A Bidder may refuse the request without forfeiting its bid security.

## 18. Bid Security (Guarantee)

18.1 The Bidder shall furnish a bid security as part of its bid

18.2 The bid security/guarantee shall be submitted in the value, currency and valid to the period as specified in the BDS. Additionally, it should be:

1. a guarantee issued by a bank or a certified cheque;
2. issued by a bank registered in Kurdistan Region of Iraq (KRI) chosen by the Bidder or to the Bidder’s option by a foreign bank (not operating in Iraq) accredited by the KRI Central Bank.
3. comply with one of the formats specified in Section IV – Bidding Forms or any other format adopted by the Employer prior to Bid submission.
4. unconditional, irrevocable and payable immediately upon issuance of a written request by the Employer in the cases indicated in ITB 18-5.
5. presented in original form; copies shall not be accepted.
6. valid for 28 days after expiration of the Bid validity and any extension thereto, if requested in accordance with ITB 21-2

18.3 Any bid not accompanied by a bid security shall be rejected by the Employer, pursuant to ITB 18.2.

18.4 The bid security of unsuccessful Bidders shall be returned as promptly as possible except for the nominated awardees, pursuant to ITB 39-6.

18.5 The bid security may be forfeited; the Bidder will be considered ineligible for award of any contract by KRI Contracting Authorities for the period specified in the **BDS**, if the Bidder fails to:

1. furnish a performance security in accordance with ITB 41.
2. sign the Contract in accordance with ITB 40.

18.6 If the Bid is submitted by a JV, the bid security shall be in the name of the JVthat submits the bid, or in the name of the JV delegated member. If the JV was not established legally at the time of bid submission, the bid security should be in the name of all future designated members.

## 19. Format and Signing of Bid

19.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 10 and clearly mark it “Original”. In addition, the Bidder shall submit copies of the bid in the number**,** and clearly mark each of them “Copy”, asspecified in the **BDS.** In the event of any discrepancy between the original and the copies, the original shall prevail.

19.2 Alternative bids, if permitted in accordance with ITB 12, shall be clearly marked and submitted as specified in ITB 21-1, as well as marked “Alternative”.

19.3 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by the delegated manager or a person duly authorized. This authorization shall be certified by a Public Notary

19.4 Any correction, erasure, or addition shall be valid only if they are signed by the delegated person with company’s stamp

19.5 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by the legal members of the JV.

# D. Submission and Opening of Bids

## 20. Sealing and Marking of Bids

20.1 The Bidder shall enclose the original and all copies of the bid, including alternative bids, if permitted in accordance with ITB 12, 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; procedures forthwith shall be followed as stipulated in ITB 20-2 and ITB 20-3.

20.2 The inner and outer envelopes shall:

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

(b) be addressed to the Employer as provided in the **BDS** pursuant to ITB 21.1;

(c) bear the specific identification of this bidding process specified in accordance with BDS 1.1; and any other identification signs as indicated in the ITB;

(d) bear a warning not to open before the time and date for bid opening in accordance with ITB 24-1.

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

## 21. Deadline for Submission of Bids

21.1 Bids must be received by the Employer at the address and no later than the date and time specified in the **BDS**. Bidders shall submit their bids by hand or registered mail. When so specified in the BDS, bidders shall submit their bids electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the BDS.

21.2 The Employer has the right to extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 7, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

## 22. Late Bids

22.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 21. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

## 23. Withdrawal, and Modification of Bids

23.1 A Bidder has the right to withdraw or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 19.3. All notices must be:

(a) submitted in accordance with ITB 19 and ITB 20, and the respective envelopes shall be clearly marked “Withdrawal” or “Modification”, as the case is.

(b) received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB 21.

23.2 Bids requested to be withdrawn in accordance with ITB 23.1 shall be returned unopened to the Bidders.

23.3 No bid may be withdrawn or modified within the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof agreed by Bidder.

## 24. Bid Opening

24.1 With due consideration to ITB 22 and 23, the Employer shall publicly open and read out loud all bids received by the deadline, at the date, time and place specified in the **BDS**, in the presence of Bidders or their designated representatives who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 21.1, shall be asspecified in the BDS.

24.2 First, envelopes marked “Withdrawal” shall be opened and read out loud and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out loud at bid opening. Next, envelopes marked “Modification” shall be opened and read out loud with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out loud at bid opening. Only envelopes that are opened and read out loud at bid opening shall be considered for competition and evaluation.

24.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Price, including any discounts and alternative bids, if allowed; the presence or absence of a bid security, or Bid Securing Declaration, if required; and any other details as the Bids Opening Committee may consider appropriate. Only discounts and alternative bids read out at bid opening shall be considered for competition and evaluation. The Bids Opening Committee shall not reject any bid (except for late bids, in accordance with ITB 22.1). The Bids Opening Committee shall stamp all pages of the bids with Committee’s stamp and the Head of Committee shall sign the Bid Letter and the Priced Bills of Quantities.

24.4 The Bids Opening Committee shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal or modification; the Bid Price, per lots if applicable, including any discounts and alternative bids, if allowed; and the presence or absence of a bid security. The Bidders’ representatives who are present shall be requested to sign the record, if practical. A copy of the record shall be published on the bulletin board and details thereof shall be published on the website.

# E. Evaluation and Comparison of Bids

## 25. Confidentiality

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

25.2 Any attempt by a Bidder to influence the Bids Evaluation Committee in the examination, evaluation, comparison of the bids and Contract award decisions shall result in the rejection of its bid.

25.3 Notwithstanding ITB 25.2, from the time of bid opening to the time of Contract award, if a Bidder wishes to contact the Employer on any matter related to the bidding process, it shall do so in writing.

## 26. Clarification of Bids

26.1 To assist in the examination, evaluation, and comparison of the bids, the Bids Evaluation Committee has the right to ask the Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Committee shall not be considered. The Committee’s request for clarification and the response shall be in writing. No change in the prices of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Committee in the evaluation of the bids, in accordance with ITB 30.

## 27. Deviations, Reservations, and Omissions

27.1 During the evaluation of bids, the following definitions apply:

(a) “Deviation” is a departure from the requirements specified in the Bidding Document;

(b) “Reservation” is the setting of limiting conditions to the requirements specified in the Bidding Document; and

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

## 28. Determination of Bids’ Responsiveness

28.1 The Bids Evaluation Committee determination of a bid’s responsiveness is to be based on the contents of the bid itself, as defined in ITB 10.

28.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without (material) deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

(a) if accepted, would:

(i) affect in any substantial way the scope, quality, or performance of the Works specified in the bid;

(ii) limit in a substantial way, inconsistent with the Bidding Document, the Employer’s contractual rights or the Bidder’s obligations.

(b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

28.3 The Bids Evaluation Committee shall examine the technical aspects of the bid submitted in accordance with ITB 15, Technical Proposal, in particular, to confirm that all requirements of Section V (Works / Employer Requirements) have been met without any material deviation, reservation or omission.

28.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Bids Evaluation Committee and shall not subsequently be made responsive by correction of the material deviation, reservation, or omission.

## 29. Non-conformities, Errors, and Defects

29.1 Provided that a bid is substantially responsive, the Bids Evaluation Committee has the right to waive any non-material non-conformity in the bid.

29.2 Provided that a bid is substantially responsive, the Bids Evaluation Committee has the right to request the Bidder to submit the necessary information or documentation, within a reasonable period of time, to rectify non-material non-conformities in the bid related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

29.3 Provided that a bid is substantially responsive, the Bids Evaluation Committee shall rectify quantifiable non-material non-conformities related to the Bid Price. To this effect, the Bid Price may be adjusted, for comparison purposes only, to reflect the price of a non-priced or non-conforming item.

## 30. Correction of Arithmetical Errors

30.1 Provided that the bid is substantially responsive, the Bids Evaluation Committee shall correct 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, unless in the opinion of the Bids Evaluation Committee there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

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

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

30.2 Bidders shall be requested to accept correction of arithmetical errors. If the bidder that submitted the first-ranked bid does not accept the correction of errors, its bid shall be rejected and its bid security is subject to confiscation.

## 31. Conversion to Single Currency

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

## 32. Margin of Preference

32.1 Unless otherwise specified in the **BDS,** a margin of preference for domestic bidders shall not apply

## 33. Subcontractors

33.1 Unless otherwise stated in the BDS, the Employer does not intend to execute any specific elements of the Works by sub-contractors selected in advance by the Employer.

33.2 The Employer may permit subcontracting for certain specialized works as indicated in Section III. When such subcontracting is permitted by the Employer, the specialized sub-contractor’s experience shall be considered for evaluation. Section III describes the qualification criteria for sub-contractors.

33.3 Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified in the **BDS**

## 34. Evaluation of Bids

34.1 The Bids Evaluation Committee shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

34.2 To evaluate a bid, the Bids Evaluation Committee shall consider the following methodologies in evaluating the bids:

(a) the bid price, excluding Provisional Sums (for example, nominated subcontractors) and the provision, if any, for contingencies in the Priced Bill of Quantities for admeasurement contracts, but including Day-works items, if contained in the Bills of Quantities, where priced competitively;

(b) price adjustment for correction of arithmetic errors in accordance with ITB 30.1;

(c) price adjustment due to discounts offered in accordance with ITB 13.4;

(d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 31;

(e) price adjustment for quantifiable non-responsive nonconformities in accordance with ITB 29.3;

(f) the additional evaluation factors as specified in Section III. Evaluation and Qualification Criteria

34.3 The effect of the price adjustment provisions, if applicable in accordance with ITB 13-5, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

34.4 If the Bidding Documents allow Bidders to quote separate prices for different lots, the methodology to determine the lowest evaluated price of the lots combinations, including any discounts offered in the Letter of Bid, is specified in Section III. Evaluation and Qualification Criteria.

34.5 If the bid for an admeasurement contract, which results in the lowest Evaluated Bid Price, is seriously unbalanced or, front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Priced Bills of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses presented by the bidder, taking into consideration the schedule of estimated Contract payments during the Contract execution period, the Employer has the right to request the nominated bidder that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract*.*

## 35. Comparison of Bids

35.1 The Bids Evaluation Committee shall compare the evaluated prices of all substantially responsive bids established in accordance with ITB 34.2 to determine the lowest evaluated bid.

35.2 If a bid price appears to be abnormally low, taking into account the cost estimate prepared by the Employer, the Employer shall verify the cost estimate and may reject the bid provided that it first requests in writing from the bidder details of the constituent elements of that bid that would satisfy the Employer that the bidder would be able to perform the contract at that bid price. The Employer shall verify those constituent elements taking account of the evidence supplied and shall take the information provided by the bidder into account in reaching its decision. Those details may relate in particular to:

1. The economics of the construction methods;
2. The technical solutions chosen and/or any specific favorable conditions available to the bidder for the execution of the works and any inputs thereof for goods or services;
3. The originality of the work supplies proposed by the bidder;
4. Extent of compliance with the provisions relating to employment protection and working conditions in force at the place where the work is to be performed;
5. If the Employer decides to accept the bid, it may require that the amount of the performance security pursuant to ITB 41 be increased up to an additional 5% of Contract value against financial loss in the event of default of the bidder under the contract.

## 36. Post-Qualification of the Bidder

36.1 The Bids Evaluation Committee shall determine whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III. Evaluation and Qualification Criteria.

36.2 The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder, pursuant to ITB 16.

36.3 Pursuant to ITB 36-1 and ITB 36-2, the post-qualification of the winning Bidder shall be a prerequisite for award of the Contract to the Bidder. Failure to comply with the requirements of the aforesaid qualification shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder’s qualifications to perform satisfactorily.

## 37. Employer’s Right to Reject All Bids and Annul Bidding Process

37.1 The Employer shall not commit to the lowest Bid on account of technical specifications and conditions and requirements of the qualification and reserves the right to reject all bids submitted, and to annul the bidding process and reject all bids at any time, based on justifiable reasons, prior to contract award, without thereby incurring any liability before Bidders. In case of annulment, BD purchase fees and bid securities shall be promptly returned to the Bidders

# F. Award of Contract

## 38. Award Criteria

38.1 The Employer shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

38.2 When two or more responsive bids from qualified bidders are tied for the best ranking after the evaluation of bids, the winning bid shall be determined in accordance with the following:

1. If the tied bidders include only one bidder from the Kurdistan Region, the bidder from the Region shall be granted the award.
2. If the tied bids were submitted only by bidders from the Kurdistan Region, and bids have been evaluated on the basis of price and non-price criteria, the award shall be made to the bidder that submitted the bid with the lowest bid-price among the tied bids.
3. If the tied bids were submitted only by bidders from outside of the Kurdistan Region, and bids have been evaluated on the basis of price and non-price criteria, the award shall be made to the bidder that submitted the bid with the lowest bid-price among the tied bids.
4. In all other situations, the award shall be made by drawing of lots unless the Employer determines that splitting the award is possible and in the public best interest, or is necessary or desirable to promote future competition, and provided the affected bidders agree to the split award.

38.3 When the price of the lowest evaluated and substantially responsive bid, in accordance with the Bidding conditions, exceeds the estimated cost of the project and the contingency for the procurement by not more than 2 percent, the Employer may, when it is in the public interest to do so, negotiate with the concerned bidder for a reduction of price in the amount that the bid price exceeded the estimated cost of the project and the contingency for the procurement. Negotiation should be conducted in writing.

## 39. Notification of Award

39.1 Notification of the award intent shall be made promptly to the successful bidder, before the expiry of the bid validity period, as well as, at the same time, directly to all the other bidders, informing them of the name, address, and bid price of the proposed awardee. That notification does not constitute a letter of acceptance of the bid.

39.2 After passage of a standstill period of seven (7) days following the date of the notice and prior to the expiration of the bid validity, the Employer shall notify in writing the successful Bidder that its Bid has been accepted. The Acceptance Letter shall indicate the amount that the Employer shall pay to the Contractor against performing the whole works (called “Contract Value”).

39.3 Upon issuance of the Acceptance Letter to the successful Bidder, the Employer shall notify all other Bidders of the Contract Award and shall release all the Bid securities submitted by them except as stipulated in ITB 39-6.

39.4 The Employer shall publish the result of the Bidding on its Website indicating the Tender reference and Lots references (if any), additional to the following information:

1. Name of every Bidder that participated in the Tender.
2. Bids prices as read out loud in the public Bids opening session.
3. Name and price of every evaluated Bid.
4. Names of Bidders whose Bids have been rejected and reasons of rejection.
5. Name of successful Bidder and its Bid price, additional to brief scope of the Contract and period.

39.5 Until a formal contract is prepared and signed, the Letter of Acceptance shall constitute a binding Contract between the two parties.

39.6 Until the successful Bidder submits performance security in accordance with ITB 41 and signs the Contract, the Employer shall retain its Bid security as well as the Bid securities of the Bidders next in ranking for potential award.

39.7 the Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 39.1, requests in writing the grounds on which its bid was not selected, within seven (7) days from notification of award.

## 40. Signing of Contract

40.1 Following issuance of the letter of acceptance, the Employer shall submit to the successful Bidder the Contract Agreement.

40.2 Within the period from award letter date, stipulated in the **BDS**, the awardee shall sign the Contract and return it to the Employer.

## 41. Performance Security (Guarantee)

41.1 The successful Bidder shall furnish the Performance Security within the period specified in the ITB and Letter of Acceptance, in accordance with the general conditions of contract, using for that purpose the Performance Security Form included in Section VIII. Contract Forms, or any other form acceptable to the Employer.

41.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Employer reserves the right to award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily. The Employer shall furthermore charge the Bidder in default the difference between its bids’ values and that of next ranked Bidders.

## 42. Adjudicator

42.1 The Adjudicator is an expert in the subject of the Contract with distinguished reputation and legal knowledge of the Contract and the laws prevailing in the KRI, and deemed by the Employer to be capable to act impartially.

42.2 The Employer proposes the person named in the **BDS** to be appointed as Adjudicator under the Contract (Employer is to attach the CV of the Adjudicator with these documents), and shall be paid at the hourly fee evenly split between the Employer and the successful Bidder, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder shall so state in his Bid and nominate a substitute. If, in the Acceptance Letter, the Employer does not agree on the appointment of the Adjudicator selected by the Bidder, the Employer shall request the Appointing Authority designated in the Special Conditions of Contract (SCC) to appoint the Adjudicator.

Section II - Bid Data Sheet (BDS)

The following data shall be completed and conditions in Section I. - ITB amended accordingly. In the case of discrepancies, the provisions in this Sheet shall prevail.

*[The instructions to complete the data are indicated in Italic between brackets]*

|  |  |
| --- | --- |
| **Number of ITB Clause** | A. General Provisions |
| **ITB 1.1** | The Contracting Authority/Employer is: *[insert complete name]* |
| **ITB 1.1** | The name of the Tender is: *[insert name and number]*The number and identification of lots comprising this bidding process is: [*insert number of lots and identification number of each lot, if applicable]* *[Insert “allowed” or “not allowed”]* for Bidders to submit separate Bids for a lot or a group of lots. |
| **ITB 3.1** | Maximum number of members in the JV shall be: *[insert number]*.  |
| **ITB 5.3** | A list of debarred firms and individuals is available on the following website: *[Insert website]*  |
| B. Contents of Bidding Documents |
| ITB 6.1 | For **clarification purposes** only, the Employer’s address is:To: *[insert full name of person, if applicable]*Address**:** *[insert street address and number]*Floor/Room number**:** *[insert floor and room number, if applicable]*City: *[insert name of city or town]*Postal Code: *[insert postal code, if applicable]*Country: *[insert name of country]*Telephone: *[insert telephone number, including country and city codes]*Electronic mail address: *[insert email address of the Bid receiver]*Requests for clarification should be received by the Employer no later than: *[insert no. of days]* from deadline of Bids submission***.*** |
| **ITB 6.4** | A Pre-Bid meeting *[insert “shall” or “shall not”]* take place. If a Pre-Bid meeting will take place, it will be at the following date, time and place: *[insert date, time & place]*A site visit conducted by the Employer *[insert “shall be” or “shall not be”]*organized.  |
| C. Preparation of Bids |
| ITB 9.1 | The language of the bid is: *[insert language – Arabic/Kurdish/English]* *[If applicable, insert the following:*“Language for translation of supporting documents and printed literature is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. *[Specify one language]”]* |
| **ITB 10.1 (b)** | The Bidder shall submit the following schedules with the bid: *[insert schedules that must be submitted with the Bid,* *including the priced Bill of Quantities for admeasurement contracts]* |
| **ITB 10.1 (h)** | The Bidder shall submit with its bid the following additional documents:*[insert type of any additional documents that must be submitted with the Bid]*. |
| **ITB 12.1** | Alternative bids *[insert “shall be” or “shall not be”]* permitted.*[If alternative bids shall be permitted, insert:** *“The Bidder shall be permitted to submit an alternative bid when the original bid is submitted.*
* *Only the alternative of the lowest evaluated Bidder conforming to all conditions shall be considered by the* Employer*.*
* *All submitted Bids shall be evaluated in accordance with procedures stipulated in ITB 34.2”].*
 |
| **ITB 12.2** | If alternative times for completion are permitted, the evaluation method will be as specified in Section III (Evaluation and Qualification Criteria). |
| **ITB 12.4** | Alternative technical solutions shall be permitted for the following parts of the Works: *[insert parts of the Works]* |
| **ITB 13.5** | The prices quoted by the Bidder *[insert “shall be” or “shall not be”]* subject to adjustment during the performance of the Contract in accordance with the price adjustment formula indicated in Section IV. The prior approval of the Council of Ministers should be obtained for price adjustment of this contract.  |
| **ITB 14.1** | ***Option 1:*** The prices shall be quoted by the bidder in: *[insert the currency]* ***Option 2:***The prices shall be quoted by the bidder in the following currencies:*[insert the currencies]**[insert the currencies]**The second option shall be used in the case Bidder bears expenditures in foreign currencies against deliverables from abroad or for imported materials or others and desires to be paid for that cost in the required currency for payments per available exchange rate, then he shall state those currencies with maximum of two currencies to be expressed as percentage of his total bid price and indicates those currencies in Section IV.* |
| **ITB 17.1** | The bid validity period shall be: *[insert the number of days]* days. |
| **ITB 18.2**  | The amount of the bid security shall be: *[insert required amount and currency for each lot]* |
| **ITB 18.5** | If the Bidder fails to accomplish any of the actions prescribed in subparagraphs (a) or (b) of this provision, the Employer will declare the Bidder ineligible to be awarded contracts by the Employer for a period of \_\_\_\_\_\_ *[insert period of ineligibility]*. |
| **ITB 19.1** | In addition to the original bid, the number of copies is: *[insert number of copies]*. |
| D. Submission and Opening of Bids |
| **ITB 20.2. (c)** | The internal and external envelopes should bear the following additional marks:*[insert additional marks]* |
| **ITB 21.1**  | For bid submission purposes, the Employer’s address is: *[insert all required information]*To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Street Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Floor/Room number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ City and country: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Postal Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The deadline for bid submission is:Date; day, month and year: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Time; AM or PM: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Bidders *[insert “shall” or “shall not”]* have the option of submitting their bids electronically.If bidders have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: *[insert a description of the electronic bidding submission procedures]*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **ITB 24.1** | The bid opening shall take place at: *[insert all required information]*Name of Department: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Street Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Floor/Room number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ City and country: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date; day, month and year: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Time; AM or PM: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
| **ITB 24.1** | If electronic submission of bids is permitted in accordance with ITB 21.1, the electronic bidding submission procedures shall be: *[insert detailed description of procedure]* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| E. Evaluation and Comparison of Bids |
| **ITB 31.1** | The submitted prices expressed in other currencies shall be converted to the equivalent currency\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[insert assigned currency]* The source of exchange rate shall be: *[insert the name of the source of the exchange rates].*The date for the exchange rate shall be: *[specify date (day/month/year)]* |
| **ITB 32.1** | A margin of preference *[insert “shall” or “shall not”]*apply to the local contractors in the Kurdistan Region of Iraq (KRI)*.* If a margin of preference applies to local contractors, the margin and application methodology shall be as stipulated in Section III (Evaluation and Qualification Criteria) |
| **ITB 33.1** | The Employer desires to execute certain specific parts of the Works *[insert name of part or parts]* by sub-contractors selected in advance. |
| **ITB 33.3** | Contractor’s proposed subcontracting: Maximum percentage of subcontracting permitted is: *\_\_\_\_\_\_\_% of the total contract amount or \_\_\_\_\_\_\_% of the volume of work\_\_\_\_\_\_\_\_\_\_\_\_\_.* * Bidders planning to subcontract more than 10% of total volume of work shall specify, in the Letter of Bid, the activities or parts of the works to be subcontracted along with complete details of the selected sub-contractors and their qualification and experience. The qualification and experience of the sub-contractors must meet the minimum criteria for the relevant work to be sub-contracted failing which such sub-contractors will not be permitted to participate.
* Sub-contractors’ qualification and experience will not be considered for evaluation of the Bidder. The Bidder by its own capabilities should meet all the qualification criteria.
 |
| F. Award of Contract |
| **ITB 40.1** | Signing of the Contract shall be within \_\_\_\_\_\_\_\_\_\_ days *[insert number of days]* from Letter of Acceptance. |
| **ITB 41.2** | Performance security shall be submitted \_\_\_\_\_\_\_\_\_ days *[insert number of days]* from Letter of Acceptance. |
| **ITB 42** | The Adjudicator proposed by the Employer is***: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** *[insert name and address of proposed Adjudicator]*.  The hourly fee for this proposed Adjudicator shall be: \_\_\_\_\_\_\_\_\_\_*[insert amount and currency].*  The biographical data of the proposed Adjudicator is as follows: *[provide relevant information, of his education, experience, age, nationality, and present position]* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |

Section III - Evaluation and Qualification Criteria

*(To be filled and presented by the Employer)*

This section supplements the ITB and contains all the criteria that the Employer/Bids Evaluation Committee shall use to evaluate bids in accordance with ITB.34 and determine whether the Bidder meets the required qualification requirements to implement the contract (in the case of absence of Pre-Qualification) the qualification requirements shall be applied to the nominated Bidder for award as a “post-qualification” procedure in accordance with ITB 36.

 Contents

* + - * 1. Margin of Preference (ITB 32.1)
				2. Evaluation Criteria (ITB 34)
				3. Post-Qualification Criteria (ITB 36)

All Bidders shall fill out the required information in the Bidding Forms – Section IV

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# 1. Margin of Preference (ITB 32-1)

A margin of preference for domestic bidders shall not apply unless otherwise provided for in the BDS. Where a margin of preference exists, the following procedure shall be applied for comparison of responsive bids:

*[insert details of the mechanism of application of the margin of preference].* For example; when comparing between domestic evaluated bid price with that of the foreign bidder, a margin of preference of 5% of its bid price shall be added to the foreign bidder’s evaluated price and then the award shall be granted to the evaluated lowest-price bid after applying the said percentage for the purpose of evaluation only.

# 2. Evaluation (ITB 34)

In addition to the bid price in accordance with ITB 34.2, the following criteria shall be considered by the Bids Evaluation Committee:

Option 1; 100 points for price

Option 2:

1. (90) points for price
2. Quality assurance system with maximum of (10) points comprising evidence of presence of professional safety inspector with the contractor and evidence of availability of Works implementation guide and management guide, (ISO – 9000) accreditation is prefered.

## 2.1 Adequacy of Technical Proposal

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail including a description of the contractor’s Internal Quality Assurance Guide, in accordance with the requirements stipulated in Section IV.

## 2.2 Multiple Contracts (Multiple Lots)

**Lots**

Bidders have the option to Bid for one contract (one lot) or more than one contract (a number of lots). Bids will be evaluated for each contract separately, taking into account discounts offered by the Bidder in case awarded more than one contract. The contract(s) will be awarded to the Bidder or Bidders offering the lowest cost to the Employer for combined lots, subject to the selected Bidder(s) meeting the required qualification criteria for the contracts to be awarded thereto.

**Qualification Criteria for Multiple Contracts:**

Section III describes criteria for qualification for each lot (contract) and for multiple lots (contracts). The criteria for qualification is aggregate minimum requirement for respective lots as specified under items 3.1, 3.2, 4.2(a) and 4.2(b). However, with respect to the specific experience under item 4.2 (a) of Section III, the Employer will select any one or more of the options as indicated in the appended list.

For tenders of multiple contracts (lots), Bidders shall specify interest for the one contract or combination of contracts in their applications. The Employer’s qualification of each applicant will be based on the largest combination of lots in which the Bidder specified its interest and for which the Bidder meets the aggregate suitable requirements. The requirements and qualification criteria are indicated in Section III. However, with respect to the specific experience under item 4.2 (a) of Section III, the Employer will apply the contractor’s capability for completion with respect to the lots contained in its bid, as follows:

N is the minimum number of contracts requested by Employer

V is the minimum value of a single contract

**(a) Prequalification for one Contract**:

1. N contracts, each of minimum value V; or
2. Previous experience of completed contracts less or equal to N, each of minimum value V, but with total value for all previous contracts equivalent to or more than NxV;

**(b) Prequalification for multiple Lots**

Minimum requirements for combined lots shall be the aggregate requirements for each lot for which the bidder based its application to, being N1, N2, N3 which are the several works’ packages within the first lot, the second and the third…etc. V1, V2 and V3 represent the “average” value of the works’ packages of the first lot, the second lot and the third lot…etc.

If the Bidder meets the requirements of the specific experience, the qualification for each lot shall be as follows:

Lot 1: For contracts equals or less than N1, each of minimum value V1, but with total value equals or more than 50-80% of N1xV1;

Lot 2: For contracts equals or less than N2, each of minimum value V2, but with total value equals or more than 50-80% of N2xV2;

Lot 3: For contracts equals or less than N3, each of minimum value V3, but with total value equals or more than 50-80% of N3xV3;

----etc.

The qualification of several combinations shall be according to the total value of the previously completed contracts by the Bidder, equivalent to or more than (50-80%) of (N1xV1+N2xV2=N3xV3).

The qualifications of the applicant only shall be considered. Specifically, the qualifications of the parent company or other affiliated companies that do not constitute a partner to the applicant in the JV in accordance with ITB 3.1 (or participant as a subcontractor in accordance with ITB 33).

## 2.3 Alternative Completion Times

An alternative Completion Time, if permitted under ITB 12.2, will be evaluated as follows:

Example; When the Bidder proposes a longer period than the minimum specified but within the maximum permissible completion period, the Employer will increase the Bidder’s price by an amount of [0.1%; this percentage is a guide, but should be converted to a lump sum amount for the purpose of evaluation] for each day exceeding the minimum period when comparing Bidder’s evaluated price with other bids’ prices.

## 2.4 Technical Alternatives

Technical alternatives, if permitted under ITB 12.1, will be evaluated as follows:

1. “The Bidder has the right to submit an alternative with its bid that conforms to the original requirements. The Employer shall consider the alternative only if the submitted original bid is the lowest evaluated substantially responsive to the bidding conditions”.
2. Technical alternatives, if permitted for part of the works under ITB 12.4, will be evaluated as follows:

“The Bidder has the right to submit an alternative for that part whether it submitted bid in accordance with the original requirements or not. The Employer shall study the alternative bids according to the specifications indicated in Section II – Works Requirements. All the bids (original and alternatives) shall be studied and evaluated in accordance with the procedures indicated in ITB 34.”

## 2.5 Specialized Subcontractors

Specialized Subcontractor is the contractor that performs works rarely undertaken by ordinary construction contractors like tunnelling or complex electro-mechanical works like control systems and specilaized central air-conditioning works,

Only the specific experience of sub-contractors for specialized works permitted by the Employer will be considered. The general experience and financial resources of the specialized sub-contractors shall not be added to those of the Bidder for purposes of qualification of the Bidder.

 The Bidder and its specialized sub-contractors should meet the following listed requirements:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Eligibility and Qualification Criteria** | **Compliance Requirements** | **Documentation** |
| **No.** | **Subject** | **Requirement** | **Single Entity** | **Joint Venture (existing or intended)** | **Submission Requirements** |
| **All Parties Combined** | **Each Member** | **One Member** |
| 1. Eligibility |
| 1.1 | **Nationality** | Nationality in accordance with ITB 3.3 | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Forms ELI – 1.1 and 1.2, with attachments |
| 1.2 | **Conflict of Interest** | No conflicts of interest in accordance with ITB 3.2 | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Letter of Bid |
| 1.3 | **Bank Eligibility** | Not having been declared ineligible by KRG Ministry of Planning, as stipulated in KRG Public Procurement Regulation 2 of 2016 in accordance with ITB 2, | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Letter of Bid |
| 1.4 | **United Nations resolution or Borrower’s country law** | Not having been excluded as a result of prohibition in Iraqi laws or official regulations against commercial relations with the Bidder’s country, or by an act of compliance with UN Guarantee Council resolution, both in accordance with ITB 2. | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Forms ELI – 1.1 and 1.2, with attachments |
| 2. Historical Contract Non-Performance |
| 2.1 | **History of Non-Performing Contracts** | Non-performance of a contract[[1]](#footnote-1) did not occur as a result of contractor default since 1st January [*Insert year providing that specified period does not exceed previous three years].*  | Must meet requirement 2  | Must meet requirements | Must meet requirement[[2]](#footnote-2)  | N/A | Form CON-2 |
| 2.2 | **Pending Litigation** | Bidder’s financial position and prospective long term profitability sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder | Must meet requirement  | N/A | Must meet requirement  | N/A | Form CON – 2 |
| {All pending litigations shall not constitute in total more than (30% to 50%) of the net capital of the Bidder} |
| 2.3 | **Litigation History** | No consistent history of court/arbitral award decisions against the Bidder[[3]](#footnote-3) since 1st January [*Insert year providing that specified period does not exceed previous three years].* | Must meet requirement  | Must meet requirement | Must meet requirement  | N/A | Form CON – 2  |
| . Financial Situation and Performance |
| 3.1 | **Financial Capabilities** | (i) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Iraqi Dinars IQD *[insert word and figure of amount in IQD]* \* the subject contract(s) net of the Bidders other commitments(ii) The Bidders shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.(iii) The audited balance sheets or, if not required by the laws of the Kurdistan Region of Iraq (KRI), other financial statements acceptable to the Employer, for the *[insert required number of years in figure and word, normally last five years but not less than three years]* shall be submitted and must demonstrate the current soundness of the Bidder’s financial position and indicate its prospective long-term profitability \*\*. | Must meet requirementMust meet requirementMust meet requirement | Must meet Requirement Must meet requirementN/A | N/A N/AMust meet requirement | N/AN/AN/A | Form FIN – 3.1, with attachments |
| {\*: To determine the requirements of the cash flow for a number of months, it shall be calculated according to the required period of time for the Employer to disburse the progress payment of the contractor/provider taking into consideration (a) actual time lapse in execution since the month of request for payment, (b) time required to issue monthly certificate, (c) time period for the Employer to pay the due amount. The entire period should not exceed six months. Review of the monthly amount should be based on straight-line projection for cash flow requirements during the Contract specified duration with neglecting any effects of previous payments or retained amounts but with considering the estimated Contract contingency}.{\*: The Bidder’s submitted financial information should be thoroughly reviewed to reach a decision based on sound information and the decision of the Bidder pass-fail in financial capability should be based on that. Any unusual features that could result in financial issues should alert the Employer to seek the review and analysis of a professional expert.}   |
| 3.2 | **Average Annual Construction Turnover** | Minimum average annual construction turnover of *[insert number and figure of the amount in IQD] \** calculated as total certified payments received for contracts in progress and/or completed within *the [insert number of years in figure and word, normally the last five years but not less than three years]* years, divided by *[insert number of years in figure and number].* | Must meet requirement | Must meet requirement | Must meet *[insert number]* (%) *[insert number in word and figure]* of the requirement | Must meet *[insert number]* (%) *[insert number in word and figure]* of the requirement | Form FIN – 3.2 |
| {\*: The amount should normally be less than V/T x 2; V: average annual turnover or the cash flow of the Contract subject of the prequalification, calculated on the basis of straight-line projection of the total Employer’s estimated cost of Contract additional to any contingency amounts, divided by (T): the contract implementation duration. It is possible to reduce the number 2 (or 3 for medium-size projects) to 1.5 as a minimum (for very large projects of value of approximately $ 200 or greater).}Projects under implementation or shall be implemented should be determined clearly with reference to the contracts prices and (%) progress. |
| 4. Experience |
| 4.1 (a) | **General Construction Experience** | Experience under works *or* supply contracts in the role of prime contractor *or*, JV member, sub-contractor, or management contractor for at least *[insert number of years in figure and word, normally five years or more]* years starting 1st January *[insert year].* |  |  | Must meet requirement |  |  |
| 4.2 (a) | **Specific Construction & Contract Management Experience** | (i) The number of similar [[4]](#footnote-4) contracts specified below that have been satisfactorily and substantially[[5]](#footnote-5) completed as a prime contractor, joint venture member[[6]](#footnote-6), management contractor or sub-contractor7 between 1st January *[insert year. Required period is normally five years or more]* and application submission deadline: N contracts, each of minimum value V; *[insert value of V and N]** + 1. Pre-qualification of one contract:

N is the minimum number of contracts requested by EmployerV is the minimum value of a single contract1. N contracts, of minimum value V
2. Previous completion of contracts equal or less than N, each of minimum value of V, but with total value of all previous contracts equal or more than NxV;
	* 1. Pre-qualification of multi lots:

Minimum requirements for combined lots shall be the aggregate requirements for each lot for which the bidder based its application to, being N1, N2, N3 which are the several works’ packages within the first lot, the second and the third…etc. V1, V2 and V3 represent the “average” value of the works’ packages of the first lot, the second lot and the third lot…etc.If the Bidder meets the requirements of the specific experience, the qualification for each lot shall be as follows: Lot 1: For contracts equals or less than N1, each of minimum value V1, but with total value equals or more than 50-80% of N1xV1;Lot 2: For contracts equals or less than N2, each of minimum value V2, but with total value equals or more than 50-80% of N2xV2;Lot 3: For contracts equals or less than N3, each of minimum value V3, but with total value equals or more than 50-80% of N3xV3; | Must meet requirement | Must meet requirement[[7]](#footnote-7) | N/A | N/A | Form EXP 4.2(a) |
| *{Add the following if specialized sub-contractor is permitted and describe nature and characteristics of specialized works:*(ii) For the following specialized works, the Employer permits specialized sub-contractors as per ITB 24.2} | “Must meet requirement for one contract (Requirement can be met through a Specialized Sub-contractor)” | Must meet requirement |  | “Must meet requirement (Requirement can be met through a Specialized Sub-contractor)” |  |
|  | {\*: The period is normally 5-10 years, and should be linked to the number of similar contracts as above and with period of contract subject of the pre-qualification. Example: 10 years for two contracts each of 5 years or 6 years for two contracts each of 3 years. Completion certificates issued by contracting entities/employers/purchasers should be presented to this effect.}{\*: Insert number of contracts N which should be 1-3 dependent on volume and complexity of contract subject of this pre-qualification, and the extent to which the employer is subjected to risks of contractor/sub-contractor failure and local conditions.Insert the amount in Iraqi Dinars (IQD). The grand total value for NxV is normally for guidance about (80%) of the estimated cost of the contract subject of pre-qualification}  |
| 4.2 (b) |  | For the above and any other contracts completed and under implementation as prime contractor, joint venture member, management contractor or sub-contractor on or after the first day of the calendar year during the period stipulated in 4.2 (a) above, a minimum construction experience in the following key activities successfully completed[[8]](#footnote-8): *[list activities indicating volume, number or rate of production as applicable][[9]](#footnote-9)* | Must meet requirements  | Must meet requirements | N/A | Must meet the following requirements for the key activities listed below *[list key activities and the corresponding minimum requirements]* | Form EXP – 4.2 (b) |

# 3. Bidder’s Personnel

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

*[In case of multiple contracts, state the required persons for each contract]*

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Position / Role in Project** | **Total Work****Experience (years)** | **In Similar Works Experience****(years)** |
| 1 |  |  |  |
| 2 |  |  |  |
| 3 |  |  |  |
| 4 |  |  |  |
| 5 |  |  |  |
|  |  |  |  |

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

# 4. Equipment

The Bidder must demonstrate that it will be able to provide the key equipment listed hereafter:

|  |  |  |
| --- | --- | --- |
| **No.** | **Equipment Type and Characteristics** | **Minimum Number required** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
| 4 |  |  |
| 5 |  |  |
|  |  |  |
|  |  |  |

Section IV - Bidding Forms

*(To be filled out and presented by the Bidder)*

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# Letter of Bid

|  |
| --- |
| *The Bidder must prepare the Letter of Bid in accordance with the below instructions. Any amendment to this letter shall not be permitted and any replacement shall be rejected.* |

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

Tender No.: **[*insert number of bidding process*]**

Invitation for Bid No.: ***[insert identification]***

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

We the undersigned confirm that:

1. We have examined and have accepted all conditions and requirements contained therein, including the annexes: *[insert reference and date of each annex]*
2. We pledge to execute the following works in conformity with the Bidding Documents within the completion duration indicated in the schedule of requirements:
**[*insert a brief description of the Works, including the lot or combination of lots covered by the bid*]**;
3. The total price of our Bid, excluding any discounts offered in item (d) below is:
 ***[insert the total price of the bid in words and figures. In case of one lot or combination of lots, the price shall be detailed for each lot in the currencies indicated for each lot]*;**
4. The discounts offered and the methodology for their application are:

**Discounts:** If our bid is accepted, the following discounts shall be applied:

 ***[Specify in detail each discount offered to which lot or combination of lots in works requirements to be specifically applied****]*

**Methodology of application**: Discounts shall be applied using the method shown below*:*

*[****Specify in detail the method that shall be used to apply the discounts****];*

Our bid shall be valid for the period specified in ITB (17.1) from the date fixed for the bid submission deadline in accordance with ITB (21.1), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

1. If our bid is accepted, we commit to obtain a performance security in accordance with ITB (41), and Paragraph 5.1 of the GCC, also sign the contract in accordance with ITB (40) and according to the time schedule fixed in the **BDS**; otherwise, we shall be responsible all the legal prosecutions undertaken upon us including forfeiture of the bid bond presented by us / debarment for the period specified in ITB (18.5) and bearing the difference in the value resulting from awarding the tender to another nominee.
2. We, along with any of our subcontractors, hold nationalities of eligible countries [insert bidder nationality and the nationalities of all parties entered in the bid if the bidder is a JV and the nationality of all sub-contractors].
3. We have no conflict of interest in accordance with ITB (3.2).
4. Our company or any branch thereof or any of its affiliates including sub-contractors has not been previously declared ineligible for any part of this work in accordance with the prevailing laws in KRI in accordance with ITB (3.5).
5. We understand that the bid and acceptance letter comprise a binding contract between us until the formal signature of contract.
6. We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Signature: *[insert name and title of the assigned person]*

Capacity: *[insert the official capacity of the signatory of the Bid Letter]*

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

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

Duly signed on \_\_\_\_\_\_\_\_\_\_\_Day \_\_\_\_\_\_\_\_\_\_\_\_Month \_\_\_\_\_\_\_\_\_\_\_Year \_\_\_\_\_\_\_\_

*[Insert date of signature]*

# Schedules

# Bill of Quantities

***[The Bidder shall fill out the prices on bill of quantities in accordance with the instruction below; the items in the first column of the bill of quantities should match with the items specified by the Employer in the Works Requirements]***

# Sample of Priced Bill of Quantities

(As per sequence of Bill of Quantities appended to the Bidding Documents)

Separate schedual is to be filled out for each required currency by bidder

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| ***Item no.*** | ***Description*** | ***Unit*** | ***Quantity*** | ***Unit Rate*** | ***Sub-total Amount of the Item*** |
| ***Figure*** | ***Letter*** |
| 1 |  |  |  |  |  |  |
| 2 |  |  |  |  |  |  |
| 3 |  |  |  |  |  |  |
| 4 |  |  |  |  |  |  |
| 5 |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
| **Grand Total:** |  |

# Schedule of Payment Currencies

Separate tables may be required if the various sections of the Works will have to be paid for in different foreign currencies additional to the Iraqi Dinar (IQD).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of Payment Currency** | **Amount of Currency** | **Rate of Exchange****to Local Currency** | **Amount in Iraqi Dinar** | **Percentage of Amount to Total Bid Price** |
| Iraqi Dinar |  | **1.00** |  |  |
| Foreign Currency #1 |  |  |  |  |
| Foreign Currency #2 |  |  |  |  |
| Total Bid Price |  |  |  | **100.00%** |
| Provisional Sums Expressed in Local Currency |  | **1.00** |  |  |
| TOTAL BID PRICE (Including provisional sum) for the Purposes of Employer |  |  |  |  |

# Schedules of Price Adjustment Data (Local Currency)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Index****Code** | **Index Description** | **Source of Index** | **Base Value****on Date of (14) days before deadline** | **Bidder’s****Local Currency Due Amount** | **Weights in Adjustment Formula Accepted by Contractor** |
|  |  |  |  |  |  a: % |
|  |  |  |  |  |  b: % |
|  |  |  |  |  |  c: % |
|  |  |  |  |  |  d: % |
|  |  |  |  | **Total** | **1.00** |

# S**chedules of Price Adjustment Data (Foreign Currency)**

| **Index Code** | **Index Description** | **Source of Index** | **Base Value****on Date of (14) days before deadline** | **Bidder’s Foreign Currency Due Amount** | **Weights in Adjustment Formula Accepted by Contractor** |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  a: % |
|  |  |  |  |  |  b: % |
|  |  |  |  |  |  c: % |
|  |  |  |  |  |  d: % |
|  |  |  |  | **Total** | **1.00** |

**Form of Bid Security (Bank Guarantee)**

 *[The Bank fills out the Bank Security Form in accordance with the instructions fixed within brackets]*

*[insert Bank’s name and address or the issuing source]*

**Beneficiary: *[****Insert name and address of the* Employer*]*

**Invitation for Bids No:** *[Insert reference number for the Invitation for Bids]*

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

**BID SECURITY No.:** *[Insert guarantee reference number]*

We have been informed that *[insert name of the Bidder]* (hereinafter called "the Applicant") has submitted its bid dated *[insert date]* (hereinafter called "the Bid") for the execution of *[insert description of contract]*.

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

At the request of the Applicant, we *[insert Bank’s name]*, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in letters]* (*insert amount in numbers*) Iraqi Dinars immediately upon receipt by us a written request at first instant of the Beneficiary supported by the Beneficiary’s statement, stating that the Applicant has violated its (commitments) under the bid conditions, because the Applicant:

(a) has withdrawn its Bid during the period of bid validity specified by the Applicant in the Letter of Bid, or

(b) having been notified of the acceptance of its Bid by the Beneficiary during the period of bid validity,

(i) fails or declines to execute the Contract Agreement, if applicable, or

(ii) fails or declines to furnish the performance security, in accordance with the Instructions to Bidders (“ITB”).

This guarantee will expire:

(a) if the Applicant is the successful Bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the performance security issued to the Beneficiary, or

(b) if the Applicant is not the successful Bidder, upon the earlier of:

(i) our receipt of a copy of the Beneficiary’s notification to the Applicant that the tender was not awarded to him; or

(ii) twenty-eight days after the Validity Period of the bid.

Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 458.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*[signature(s) of authorized representative(s)]*

# Technical Proposal

# Technical Proposal Forms

The Bidder must fill in the indicated forms below:

1. Bidder’s Personnel: The Bidder shall name the nominated personnel to assume the key positions specified by the Employer in Section III –Evaluation and Qualification Criteria.

Equipment: The Bidder shall fill in separate form for each key equipment that the Employer requests to be provided in accordance with Section III –Evaluation and Qualification Criteria.

Site Organization: The Bidder shall present drawings showing temporary work areas that he intends to mobilize at site.

Method Statement: The Bidder shall present description on the methods for execution of the Works that he intends to follow.

Mobilization Schedule: The Bidder shall present a schedule of the sequence of activities and timelines relating to preparation of the site to commence execution of works.

Construction Schedule: The Bidder shall present a schedule of the sequence of activities and timelines relating to the execution of works within the duration specified by the Employer.

Others: Any other information that the Bidder desires to show to the Employer.

# Schedule of Contractor (Bidder) Proposed Personnel

Bidders should select suitably qualified personnel to meet the specified requirements for each of the positions listed in Section III – Evaluation and Qualification Criteria.

|  |  |
| --- | --- |
| 1. | Title of position and name of person selected for that specific position |
| 2. | Title of position and name of person selected for that specific position |
| 3. | Title of position and name of person selected for that specific position |
| 4. | Title of position and name of person selected for that specific position |
| 5. | Title of position and name of person selected for that specific position |
| 6. | Title of position and name of person selected for that specific position |

The CV of each of the above key persons should be appended.

# Forms for Key Equipment

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III – Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed.

|  |
| --- |
| Type of Equipment |
| Equipment Information | Name of manufacturer,  | Model and power rating |
|  | Capacity or production power per hour | Year of manufacture |
| Current Status | Current location |
| Details of current commitments |
| Source | Indicate source of the equipment1. Owned by Bidder
2. Rented
3. Specially manufactured for Bidder
 |

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

|  |  |
| --- | --- |
| Owner | Name of owner |
| Address of owner |
|  |
| Telephone of owner | Name of Stakeholder |
| E-mail |
| Agreements | Details of rental / manufacture agreements specific to the project |

# Bidder’s Qualifications

# Bidder Information Form

***[The Bidder shall fill in this form in accordance with the instruction below. Any amendment to this form is not permitted and any replacement shall be rejected]***

Date: *[insert date of bid submission (day/month/year)]*
Tender: *[insert Tender reference number]*
Page *\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |
| --- |
| 1. Bidder's legal name: *[insert bidder’s name]*
 |
| 1. In case of Joint Venture (JV), legal name of each member should be stated:

*[insert legal name of each member]* |
| 1. Bidder's actual or intended country of registration: *[indicate country of Constitution]*
 |
| 1. Bidder's actual year of registration: *[insert year of registration]*
 |
| 1. Bidder's legal address in country of registration: *[insert address]*
 |
| 1. Bidder's authorized representative information

Name: *[insert name of authorized representative]*Address: *[insert address of authorized representative]*Telephone/Fax numbers: *[insert telephone/fax number of authorized representative]*E-mail address: *[insert e-mail address of authorized representative]* |
| 1. Attached are copies of original documents of: *[fix mark on side of the appended documents]*

□ Registration certificate of the legal entity named above, in accordance with ITB 3.1 and ITB 3.2.□ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 3.1. |

# Information Form for JV Members

***[The Bidder shall fill in this form in accordance with the instruction below]***

Date: [insert date of bid submission (day/month/year)]
Tender: [insert Tender reference number]
Page *\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |
| --- |
| 1. Name of Bidder: *[insert Bidder’s name]*
 |
| 1. Bidder’s Joint Venture legal name: *[insert legal name of JV Bidder and of each member in JV]*
 |
| 1. JV member’s country of registration: *[insert name of country]*
 |
| 1. JV member’s year of constitution: *[insert year of registration]*
 |
| 1. JV member’s legal address in country of registration: *[insert address]*
 |
| 1. JV member’s authorized representative information

Name: *[insert name of authorized representative]*Address: *[insert address of authorized representative]*Telephone/Fax numbers: *[insert telephone/fax number of authorized representative]*E-mail address: *[insert e-mail address of authorized representative]* |
| 1. Attached are copies of original documents of: *[fix mark on side of the appended documents]*

□ JV establishment agreement and registration in accordance with ITB 3.1  |

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

***[The Bidder and each of the JV members shall fill in this form]***

Bidder’s Name: *[insert full name]* Date: *[insert day, month, year]*Joint Venture Name: *[insert full name]*Tender No. and title: *[insert number and title]*

No. of Invitation Letter: *[insert number]*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |
| --- |
| Non-Performed Contracts in accordance with Section III, Evaluation Criteria and Qualifications |
| □ Contract non-performance did not occur since 1st January *[insert year]* specified in Section III, Evaluation Criteria and Qualifications, Sub-Factor 2.1.□ Contract(s) not performed since 1st January *[insert year]* specified in Section III, Evaluation Criteria and Qualifications, requirement 2.1 |
| **Year** | **Non- performed portion of contract** | **Contract Identification** | **Total Contract Amount** |
| *[insert year]* | *[insert amount of that portion and its &age of contract value]*  | Contract Identification: *[insert the full title of the contract, its number and any relevant information]*Name of Employer: *[insert full name]*Address of Employer: *[insert street/city/country]*Reasons for non-performance: *[indicate major reasons]* | *[insert amount in letter and figure (of contract currency and equivalent amount in IDQ and state exchange rate used)]* |
|  Pending Litigation, in accordance with Section III, Evaluation Criteria and Qualifications |
| □ No pending litigation in accordance with Section III, Evaluation Criteria and Qualifications, Sub-Factor 2.2.□ Pending litigation in accordance with Section III, Evaluation Criteria and Qualifications, Sub-Factor 2.2 as indicated below in accordance with prevailing legislations. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Year** | **Amount Subject of Litigation (Currency)** | **Contract Identification** | **Total Contract Amount** |
| *[insert year]* | *[insert amount]*  | Contract Identification: *[insert the full title of the contract, its number and any relevant information]*Name of Employer: *[insert full name]*Address of Employer: *[insert street/city/country]*Subject of litigation*: [indicate major elements of litigation]*Party that started litigation: *[indicate employer’s name or contractor/supplier]*State of litigation: *[indicate whether litigation is to be resolved by mediator through arbitration or judicial proceeding]*  | *[insert amount in letter and figure (of contract currency and equivalent amount in IDQ and state exchange rate used)]* |
|  Pending Litigation, in accordance with Section III, Evaluation Criteria and Qualifications |
| □ No pending litigation in accordance with Section III, Evaluation Criteria and Qualifications, Sub-Factor 2.2.□ Pending litigation in accordance with Section III, Evaluation Criteria and Qualifications, Sub-Factor 2.2 as indicated below. |
| **Year** | **Litigation Result as %age of Net Equity** | **Contract Identification** | **Total Contract Amount** |
| *[insert year]* | *[insert percentage]*  | Contract Identification: *[insert the full title of the contract, its number and any relevant information]*Name of Employer: *[insert full name]*Address of Employer: *[insert street/city/country]*Subject of litigation*: [indicate major elements of litigation]*Party that started litigation: *[indicate employer’s name or contractor/supplier]*State of litigation: *[indicate whether litigation is to be resolved by mediator through arbitration or judicial proceeding]*  | *[insert amount in letter and figure (of contract currency and equivalent amount in IDQ and state exchange rate used)]* |

# Form FIN – 3.1: Financial Situation and Performance

Bidder’s Name: *[insert full name]*Date: *[insert day, month, year]*Bidder’s Party Name: *[insert full name]*Tender No. and title: *[insert number and title]*

No. of Invitation Letter: *[insert number]*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

**1. Financial data**

|  |  |
| --- | --- |
| **Type of Financial information** | **Historic information for previous** *[insert number of years]* **years, *[insert number of years in letters]*****(amounts in essential currency, equivalent IQD, exchange rate\*)** |
|  | **Year 1** | **Year 2** | **Year 3** | **Year4** | **Year 5** |
| **Statement of Financial Position (Information from Balance Sheet)** |
| Total Assets (TA) |  |  |  |  |  |
| Total Liabilities (TL) |  |  |  |  |  |
| Total Equity\*\* / Net Worth (NW) |  |  |  |  |  |
| Current Assets (CA) |  |  |  |  |  |
| Current Liabilities (CL) |  |  |  |  |  |
| Working Capital\*\*\*\* (WC) |  |  |  |  |  |
| **Information from Income Statement** |
| Total Revenue (TR) |  |  |  |  |  |
| Profits Before Taxes (PBT) |  |  |  |  |  |
| **Cash Flow Information**  |
| Cash Flow from Operating Activities |  |  |  |  |  |

**\*** The bidder may state the value according to the exchange rate at that date, supported by evidence or axchange rate bulletin at that date.

**\*\*** Total equity is the net difference between the total assets and total liabilities.

**\*\*\*** Working capital is the difference between the current assets and current liabilities.

**2. Sources of Finance**

*[The Bidder and all members of the JV should fill the following data]*

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

|  |  |  |
| --- | --- | --- |
| **No.** | **Source of finance** | **Amount (in essential currency, equivalent IQD, exchange rate)** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
|  |  |  |

**3. Financial documents**

The Bidder and its parties shall provide copies of financial statements (financial statements duly certified) for previous *[insert required number of years]* years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

(a) reflect the financial situation of the Bidder or in case of JV members, and not an affiliated entity (such as parent company or group member).

(b) be independently audited or certified in accordance with local legislation.

(c) be complete, including all notes to the financial statements.

(d) correspond to accounting periods already completed and audited.

□ Attached are copies of financial statements[[10]](#footnote-10) for the *[insert number]* years required above; and complying with the requirements

# Form FIN - 3.2: Average Annual Construction Turnover

Bidder’s Name: *[insert full name]*Date: *[insert day, month, year]*Bidder’s Party Name: *[insert full name]*Tender No. and title: *[insert number and title]*

No. of Invitation Letter: *[insert number]*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |
| --- |
| **Annual turnover data (construction only)** |
| **Year** | **Annual Income** | **Exchange rate\*** | **USD equivalent** |
| *[indicate year]* | *[insert amount and indicate currency]* |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  | Average Annual [Construction] Turnover \*\* in figures and letters |  |  |

\* The bidder may state the value according to the exchange rate at that date, supported by evidence or exchange rate bulletin at that date.

\*\* Total equivalent in IQD of all years divided by number of years. Refer to Section III – Evaluation and qualification Criteria, Sub-Factor 3.2

# Form EXP - 4.1: General Construction Experience

*[The Bidder and all members of the JV should fill the following data]*

Bidder’s/JV Partner Name: *[insert full name]*Date: *[insert day, month, year]*JV Name: *[insert full name]*Tender No. and title: *[insert number and title]*

No. of Invitation Letter: *[insert number]*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

Indicate number of contracts that prove consistent work throughout *[insert number]* years in accordance with Section III – Evaluation and Qualification Criteria, Sub-Factor 4.1, in time sequence according to commencement (start) the work.

|  |  |  |  |
| --- | --- | --- | --- |
| **Starting****Year** | **Ending****Year** | **Contract Identification** | **Role of****Bidder** |
| *[insert year]* | *[insert year]* | Contract name: *­­­­­­­­­­­­­­­­­­­­[insert full name]*Brief Description of the Works performed by theBidder: *[briefly describe works performed]*Amount of contract: *[insert amount and currency in figure and letter, IQD equivalent and exchange rate\* used]*Name of Employer: *[insert full name]* Address: *[insert street/city/country]* | *[insert prime contractor or JV partner or sub-contractor or contract manager]* |
| *[insert year]* | *[insert year]* | Contract name: *­­­­­­­­­­­­­­­­­­­­[insert full name]*Brief Description of the Works performed by theBidder: *[briefly describe works performed]*Amount of contract: *[insert amount and currency in figure and letter, IQD equivalent and exchange rate\* used]*Name of Employer: *[insert full name]* Address: *[insert street/city/country]* | *[insert prime contractor or JV partner or sub-contractor or contract manager]* |
| *[insert year]* | *[insert year]* | Contract name: *­­­­­­­­­­­­­­­­­­­­[insert full name]*Brief Description of the Works performed by theBidder: *[briefly describe works performed]*Amount of contract: *[insert amount and currency in figure and letter, IQD equivalent and exchange rate\* used]*Name of Employer: *[insert full name]* Address: *[insert street/city/country]* | *[insert prime contractor or JV partner or sub-contractor or contract manager]* |

**\*** The bidder may state the value according to the exchange rate at that date, supported by evidence or axchange rate bulletin at that date.

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

*[The Bidder and all members of the JV and specialized sub-contractors should fill the following data]*

Bidder’s/JV Partner Name: *[insert full name]*Date: *[insert day, month, year]*JV Name: *[insert full name]*Tender No. and title: *[insert number and title]*

No. of Invitation Letter: *[insert number]*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

Indicate number of contracts that prove consistent work throughout *[insert number]* years in accordance with Section III – Evaluation and Qualification Criteria, Sub-Factor 4.1, in time sequence according to commencement (start) the work.

|  |  |
| --- | --- |
| **Similar Contract No.***[insert number] of [insert total required similar contracts]* | **Information** |
| Contract Identification | *[insert name and number of contract, if applicable]* |
| Award date | *[insert day/month/year; example 15 June 2015]* |
| Completion date | *[insert day/month/year]* |
| Role in Contract*[Select as appropriate]* | Prime Contractor □ | Member in JV□ | Management Contractor□ | Sub-contractor □ |
| Total Contract Amount | *[insert amount in contract currency in letter and figure]* | *[insert amount in IQD equivalent and exchange rate\* used]* |
| If member in a JV or sub-contractor, specify participation in total Contract amount | *[insert %age of total contract amount]* | *[insert total amount in contract currency in letter and figure]* | *[insert amount in IQD equivalent and exchange rate\* used]* |
| Employer's Name: | *[insert full name]* |
| Address: | *[insert street/city/country]* |
| Telephone/fax number | *[insert number of telephone/Fax indicating country and city code]* |
| E-mail: | *[insert E-mail address, if applicable]* |

**\*** The bidder may state the value according to the exchange rate at that date, supported by evidence or axchange rate bulletin at that date.

# Form EXP - 4.2(a) (cont.)

# Specific Construction Experience (cont.)

|  |  |
| --- | --- |
| **Similar Contract No.***[insert number] of [insert total required similar contracts]* | **Information** |
| Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III: |  |
| 1. Amount | *[insert amount in contract currency in letter and figure and amount in IQD equivalent and exchange rate used]* |
| 2. Physical size of required works items | *[insert size of works items]* |
| 3. Complexity | *[describe complexity]* |
| 4. Methods/Technology | *[indicate specific features of methods/methodologies used in contract]* |
| 5. Rate of *[Construction or supply or fabrication]* for key activities | *[indicate rates and item/activities]* |
| 6. Other Characteristics | *[indicate other features as described in Section II – Works Requirements]* |

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

Bidder’s/JV Partner Name: *[insert full name]*Date: *[insert day, month, year]*Bidder’s Party Name: *[insert full name]*

Sub-contractor Name\* (in accordance with ITB 24.2 and ITB 24.3): *[insert full name]*Tender No. and title: *[insert number and title]*

No. of Invitation Letter: *[insert number]*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

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

1. Key Activity No One: *[insert brief description of the activity highlighting the specialty of this activity]*

Total quantity of activity according to the contract is; \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
|  | **Information** |
| Contract Identification | *[insert name and number of contract, if applicable]* |
| Award date | *[insert day/month/year; example 15 June 2015]* |
| Completion date | *[insert day/month/year]* |
| Role in Contract*[Select as appropriate]* | Prime Contractor□ | Member in JV□ | Management Contractor□ | Sub-contractor□ |
| Total Contract Amount | *[insert amount in contract currency in letter and figure]* | *[insert amount in IQD equivalent and exchange rate used]* |
| Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year*[insert extent of participation, specifying the actual quantity of the key activity that has been successfully executed within the required tasks]* | Total quantity in the contract(i) | Percentage participation(ii) | Actual Quantity Performed (i) x (ii) |
| Year 1 |  |  |  |
| Year 2 |  |  |  |
| Year 3 |  |  |  |
| Year 4 |  |  |  |
| Employer’s Name: |  *[insert full name]* |
| Address: | *[insert street/city/country]* |
| Telephone/fax number | *[insert number of telephone/Fax indicating country and city code]* |
| E-mail: | *[insert E-mail address, if applicable]* |

\* If applicable.

**2. Key activity No. 2**

1- …………………

|  |  |
| --- | --- |
|  | **Information** |
| Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III: |  |
|  | *[insert response to specified query at opposite side]* |
|  |  |
|  |  |
|  |  |

PART 2 – Works Requirements (Employer)

Section V - Works Requirements

Works requirements represent precise description of the Works to be executed by the contractor in conformity with the general specifications binding in the Kurdistan Region as well as the prevailing legislation> In addition, special specifications may be required for the Works, which may be selected by the Employer from ISO covering the works that require specifications yet to be implemented in the Kurdistan Region. Further, they comprise execution drawings in the manner that allow the contractor to closely follow.

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# 1. Technical Specifications

* The technical specifications comprise clear indicators through which the Employer can determine whether the bid specifications comply with the required specifications and consequently can evaluate the bid. Thus, accurately prepared specifications will facilitate the process of preparing bids by bidders that comply with the specification, in additional to examining, evaluating and comparing by Bids Evaluation Committee.
* The technical specifications must demonstrate all the requirements relating to the following points, as examples:
1. Criteria of materials and manufacturing method required for fabrication of those materials.
2. Details of the required testing (type and number).
3. Any additional work and/or relating services required to achieve the completion/delivery in an optimal manner.

**Summary of Technical Specifications**

*[The Employer uses the general specifications approved in the Kurdistan Region for general public constructions like roads, buildings, water supply and irrigation. However, if the Employer needs special specifications to execute a portion(s) of the works, the Employer shall fill in the information in the following table (columns* ***A*** *to* ***C),*** *while the bidder shall fill in columns* ***(D)*** *and* ***(E)]***

**Portions or items of works that should be compliant with the following criteria and technical specifications:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item Number** | **Portions or Items of Works** | **Required Criteria and Technical Specifications** | **Criteria and Technical Specifications Offered by Bidder** | **Compliant / Non-compliant** |
| A | B | C | D | E |
| *[insert item number]* | *[insert name]* | *[indicate criteria and technical specifications]* | *[to be filled out by Bidder]* | *[to be filled out by Bidder]* |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

Details of criteria and technical specifications, wherever necessary

*[insert a detailed description of the technical specifications]*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

# 2. Drawings

These Bidding Documents (BDs) *[insert ‘comprise’ or “does not comprise”]* drawings.

*[Insert the following list of drawings, if these BDs shall comprise such drawings]*

|  |
| --- |
| **List of Drawings** |
| **Drawing Number** | **Name of Drawing** | **Objective** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

# 3. Price Adjustment Formula, to be appended to the contract conditions

{The formula shall be applied monthly (after the 12 month in accordance with other applicable conditions specified in the Special Conditions of Contract) for works that exceed their completion duration 18 month, if approved by the KRG Council of Ministers}.

The prices shall be adjusted in accordance with the following formula as provided for in the General Conditions of Contract (GCC), Clause (60).

The prices used for disbursement of contractor’s interim payments for each currency in accordance with contract shall be subject to adjustment during contract execution in accordance with the variations in the cost of constituents of personnel wages and materials according to the following formula for every currency:

**Adjustment Value = Po + [(a+b (Ln/Lo) + c (Mn/Mo) + d (En/Eo)] – Po**

Note that: a + b + c + d =1

Where:

Adjustment Value = variance in the contractor’s interim payment.

Po = value of interim payment in accordance with contract.

Payment after adjustment = (Adjustment Value + Po).

**a** = constant representing margin of profit and overheads in accordance with the contract, also the materials that are not subject to adjustment {not included by the constant (**c**)}.

**b** = constant representing the percentage of the constituent of personnel wages to the total contract value.

**c** = constant representing percentage of the constituent of selected materials of high value and variable market prices (like steel reinforcement, cement, asphalt...etc.) to the total contract value.

**d** = constant representing the percentage of the constituent of power to the total contract value.

**Ln, Lo** = guide for the personnel wages in the relevant construction sector in the Region or the country of origin (if adjustment is intended for foreign currency) at each of the base date and adjustment date respectively.

**Mn, Mo** = guide for the raw materials in the Region or the country of origin (if adjustment is intended for foreign currency) at each of the base date and adjustment date respectively.

**En, Eo** = guide (indicator) for the machinery and power in the Region or the country of origin (if adjustment is intended for foreign currency) at each of the base date and adjustment date respectively.

**The Employer shall specify the constants a, b, and c as follows**:

1. (insert constant **a**)
2. (insert constant **b**)
3. (insert constant **c**)
4. (insert constant **d**)

The Employer may prove that value of constant a, b, c, and d is with a range; like (**a)** is within (0.15 – 0.20), **(b)** is within (0.30 – 0.40), …etc.

The Bidder determines in his bid the indicators (Names and sources – country of issuance) that will be used in determining the personnel wages, prices of materials and machinery or power) at contract signature.

Base date: the date that precedes deadline for bids submission by 14 days.

Date of price adjustment: the formula shall be applied if the following two condition are fulfilled:

1. Monthly after the 12th month after commencement date, and
2. If the adjustment in the monthly payments exceeds (Adjustment Value – Po) by 5% of (Po).

The two parties shall agree to use the formula in accordance with the following:

1. Review and adjustment of prices of the Works that are executed after expiration of the specified completion duration in accordance with contract shall not be applied unless Employer’s approval to extend the completion duration is granted. The Employer shall have the right to benefit from any reduction to the prices as a result of application of the formula.
2. If the currency of the prices in contract differ from that of the country of origin for personnel wages and materials’ prices, a correction factor shall be applied to ascertain an accurate price adjustment. The correction factor equals the ratio resulting from dividing the exchange rate of the two currencies at the base date and adjustment date.
3. Price adjustment shall not cover the advance payment (i.e. the formula is applied before deduction of the due recovery amount of the advance payment for that month.

PART 3 –Contract

Section VI. General Conditions of Civil Works Contract

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Section VI – General Conditions

# Chapter 1 – General

## 1- Definitions and Interpretation

**1-1 Definitions:**

For the purpose of the Contract herein, unless specified otherwise, words and terminology given below shall mean the corresponding definition.

1. **Employer or Contracting Authority**: The party named in Section VII (Special Conditions) that enters into the agreement with Contractor.
2. **Contractor**: The company or Joint Venture whose bid has been accepted by the Employer and shall include Contractor’s authorized representative, legal successors and permitted assigns.
3. **Nominated Sub-contractor:** The individual, firm or company other than the Contractor who has been named by the Employer or the Engineer in the Contract to execute any part of the Works in accordance with GCC (18-1), and shall include their authorized representatives, legal successors and permitted assigns.
4. **Subcontractor:** The individual, firm or company sub-contracted by the Contractor, subject to the Engineer’s written approval, in order to execute any part of the Works and includes the sub-contractor’s authorized representative, legal successors and permitted assigns.
5. **Engineer:** The individual(s), firm or company who has been named in the Special Conditions or any other individual appointed from time to time by the Employer for the purpose of fulfillment of Engineer’s tasks and duties in the Contract, name of whom shall be notified in writing to the Contractor.
6. **Engineer’s Representative:** Any resident engineer or assistant to the Engineer appointed from time to time by the Engineer for the purpose of fulfillment of the Engineer’s tasks and duties assigned in the Contract, authorities of the Engineer’s Representative shall be notified by the Engineer in writing to the Contractor.
7. **Works:** Permanent Works and Temporary (Provisional) Works, thereby comprising all materials required to be procured as well as all works to be executed by the Contractor in accordance with the terms of the Contract.
8. **Permanent Works:** Shall mean all permanent works to be executed by the Contractor including design, construction, supply, installation, operation and maintenance as required according to the terms of the Contract.
9. **Temporary (Provisional) Works:** Shall include all temporary works of any type required to implement and maintain the Works.
10. **Contract: means all of the following documents: The** agreement Form, letter of intent, Contractor’s bid, General and Special conditions, Specifications, Drawings, Priced Bills of Quantities, schedules of individual materials’ rates and labour wages and equipment charges (Dayworks), if applicable, and any other relevant documents listed in the Agreement Form.
11. **Contract Price:** The sum named in the agreement form, which is subject to increase or decrease in accordance with the terms of Contract.
12. **Completion Duration of Works:** The period of time to complete the Works or any portion thereof as stipulated in Contract, inclusive of any extension thereto in accordance with GCC 43.
13. **Construction Equipment:** Shall comprise all equipment, devices and tools of whatever nature required for completing and maintaining the Works; excluding any materials and others that enter into the core of Permanent Works.
14. **Priced Bill of Quantities:** The schedule that comprises description, quantities and unit price of all Works items, required to be executed under the scope of the Contract.
15. **Works’ Parts:** Any of the subdivisions of the Works, specified for the purpose of achieving partial acceptance or as defined and determined in another form or manner in the Contract documents.
16. **Drawings:** The drawings referred to in the Contract documents and any amendments thereto as approved in writing by the Engineer from time to time, including any other drawings submitted or approved in writing by the Engineer.
17. **Specifications:** The specifications referred to in the Contract documents and any amendments or additions thereto that the Engineer provides or approves in writing from time to time.
18. **Site:** Shall include places or plots of land within the boundaries of Kurdistan Region of Iraq where the Works are performed within, around, under or at vicinity thereof, and any other place or plots of land allocated by the Employer to perform the Contract or those specifically identified in the Contract and considered as part of the Site.
19. **Adjudicator:** The person appointed jointly by the Employer and Contractor to resolve contractual disputes that may arise due to the Engineer’s decisions against which the Contractor may object. The Contractor shall be bound to refer such disputes to the Adjudicator as a first mandatory step prior to referring the same to arbitration or judiciary. The Adjudicator issues its recommendations regarding the resolution of such disputes in accordance with GCC 68 and 69.

**1-2 Interpretation:**

1. Singular and plural: words that appear in singular form comprise the plural, and vice-versa as required by context.
2. Titles and marginal notes: Titles of Clauses or groups thereof or marginal notes within the texts of Contract Conditions shall not be regarded as integral part of the intended original meaning and shall not be considered when interpreting the same or the Contract; thereby shall not have any effect over interpretation thereof.
3. Approval: Written approval including any written confirmation to any verbal approval given earlier.
4. Words that imply persons or parties shall comprise companies also.

## 2- Scope of Contract

2-1 The Contract shall comprise all contracted Works except so far as the Contract otherwise provides; the provision of all labour, materials, Construction Equipment and all resources whether of a permanent or temporary nature, as required in the bills of quantities for performance of the Works.

## 3- Language, Contract Documents and Order of Precedence

3-1 The ruling language, according to which the Contract is to be construed and interpreted, shall be the language specified in the Special Conditions; other than matters related to Specifications, Drawings and other technical documents, where in case of language contradiction, the Kurdish or Arabic or English Language shall prevail depending on the language of the original document subject of contradiction.

3-2 In case of discrepancies between provisions of any of the Contract documents, the ruling or prevailing document shall be in accordance with the order of precedence of the documents as indicated in the contract Agreement Form.

## 4- Agreement Form and Effectiveness of Contract

4-1 The Contractor shall sign the Contract, after receiving written notice of acceptance of its bid within the specified period in the Special Conditions.

4-2 The Contract shall become effective upon the contractor’s duly notified receipt of the letter of Acceptance.

## 5- Performance Security (Bank Guarantee)

5-1 The Contractor shall furnish an unconditional letter of guarantee for satisfactory performance of the Contract issued by a bank in the Kurdistan Region of Iraq in the sum indicated in the Special Conditions and shall be in the currency(ies) specified in the Contract.

5-2 The Performance Security shall remain valid and shall not be released until the final acceptance certificate is issued and the Contractor’s fulfillment of all of its obligations under Contract. The Performance security shall not be withheld for any purpose other than for which the guarantee was issued.

## 6- Engineer’s Duties and Authorities

6-1 The Employer appoints the Engineer in order to assume the duties and authorities provided for in the Contract, and the Engineer shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract and, except as expressly indicated in Contract conditions, to order any Works involving extension of Works’ duration or any extra payment by the Employer or to make any variations of or in the Works without the prior approval of the Employer.

6-2 The Engineer may from time to time delegate to the Engineer's Representative in writing any of the duties and authorities vested in the Engineer and shall furnish to the Contractor a copy of all such written delegations of duties and authorities.

6-3 Any written instructions or approvals given by the Engineer's Representative to the Contractor within the terms of such delegation mentioned in GCC 6-2 shall bind the Contractor and the Employer as though it had been given by the Engineer, provided always as follows:

1. Failure of the Engineer’s Representative to disapprove any executed work or supplied materials shall not prejudice the power of the Engineer thereafter to disapprove such work or materials and to order the pulling down, removal or breaking off thereof.
2. If the Contractor is unsatisfied by reason of any decision of the Engineer’s Representative, he shall be entitled to refer the matter to the Engineer, as an initial step, for review of the decision who and shall thereupon confirm, reverse or vary such decision. The Contractor shall be bound to proceed in accordance with such Engineer’s decision and shall have the right, if not satisfied with the Engineer’s decision, to refer the matter of dispute to the Adjudicator in accordance with GCC 69.

## 7- Contractor’s Management and Control of the Works

7-1 The Contractor shall deploy and provide all necessary management and supervision including monitoring systems for quality assurance during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilment of the Contractor's obligations under the Contract. The Contractor or its competent and authorized representative who must be approved of in writing by the Engineer (that approval may at any time be withdrawn) is to be constantly present at the Site and shall give his whole time to the management and supervision of the Works. If such approval shall be withdrawn by the Engineer, the Contractor shall as soon as practicable after receiving written notice of such withdrawal promptly remove its representative from the Site and shall not thereafter employ him again on the Site in any capacity and shall replace him by another representative approved by the Engineer. Such authorized representative shall receive on behalf of the Contractor directions and instructions from the Engineer or the Engineer's Representative (subject to the limitations of Clause 6 hereof) whereby such directions and instructions shall be deemed to have been received by the Contractor.

## 8- Safety of Working Methods and Works to be to Satisfaction of Engineer

8-1 The Contractor shall construct and maintain the Works in strict conformity with the Contract and to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions and directions on any matter touching or concerning the Works. The Contractor shall take instructions and directions only from the Engineer or Engineer’s Representative subject to the limitations referred to in GCC 6 of these conditions.

8-2 The Contractor shall be fully responsible for the sufficiency, soundness and safety of the working methodology and construction methods implemented by him for execution of the Works.

## 9- Drawings

9-1 The Drawings shall remain in the sole custody of the Engineer but two copies thereof shall be furnished to the Contractor free of cost. The Contractor shall provide and make at his own expense any further copies required by him. At the completion of the Contract, the Contractor shall return to the Engineer all Drawings provided under the Contract.

9-2 The Contractor shall submit the detailed shop drawings to the Engineer for approval in accordance with Contract requirements.

9-3 The Contractor shall give adequate notice in writing to the Engineer or the Engineer's Representative of any further drawing or specification that may be required for the execution of the Works or for any other purpose under the Contract.

 9-4 One copy of the Drawings shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and the Engineer's Representative and by any other person authorized by the Engineer in writing.

9-5 The Engineer may furnish to the Contractor from time to time during the execution of the Works any drawings and detailed instructions as may be deemed necessary for the proper and sufficient execution and maintenance of the works in accordance with the Contract. The Contractor shall be bound to execute such drawings and instructions. In the case that the Contractor believes that such drawings or instruction might constitute a variation order in accordance with GCC (57), the Contractor shall be entitled to claim price differences in accordance with GCC (58).

9-6 The Contractor shall furnish to the Employer the blue prints of the (As Built) drawings, both soft and hard copies, of the permanent Works, prior to the issuance of the initial acceptance certificate, along with the manuals for operation and maintenance in accordance with the Contract requirements.

## 10- Inspection of Site

10-1 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and shall satisfy himself before submitting his bid as to the condition and nature of the Site, the quantities and nature of the work and materials necessary of the execution of the Works, the means of access to the Site, the accommodation that may be required and shall also be deemed to have obtained all necessary information as to risks, precautions and other circumstances which may influence or affect his bid.

## 11- Setting-Out of the Works on Site

11-1 The Contractor shall be responsible for the correct and proper setting-out of the Works on Site in relation to original coordinates, lines and levels of reference given to him by the Engineer in writing and for the correctness (subject as abovementioned) of the position levels, dimensions and alignment of all parts of the Works and the Contractor shall be responsible for the provisions of all necessary instruments, appliances and labour in connection therewith. If at any time during the progress of the Works, any error shall appear or arise in the coordinates, position levels, dimensions or alignment of any part of the Works, the Contractor, at the request of the Engineer, shall at his own expense rectify such error to the satisfaction of the Engineer unless such error is based on incorrect data supplied in writing by the Engineer, in which case the expense of rectifying the same shall be borne by the Employer. The checking of any setting-out or of any line or level by the Engineer on Site shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench-marks, site-rails, pegs and other things used in setting-out the Works on Site.

## 12- Unforeseeable Physical Conditions and Artificial Obstructions

12-1 The Contractor shall be deemed to have satisfied himself before submitting his bid as to the correctness and sufficiency of his bid for execution of the Works and of the rates and prices stated in the Priced Bill of Quantities, which rates and prices shall cover all his obligations under the Contract and all matters and things necessary for the proper completion and maintenance of the Works.

12-2 If during the execution of the Works, the Contractor shall encounter exceptional natural conditions (other than climatic conditions) like subsurface or hydrological conditions or artificial obstructions which could not have been practically foreseen by an experienced contractor, the Contractor shall forthwith give written notice to the Engineer and if in the opinion of the Engineer such conditions or artificial obstructions could not have been practically foreseen by an experienced contractor, then the Engineer shall estimate the additional costs and additional time that the Contractor shall bear by reason of such conditions and obstructions including the reasonable and proper expenses as a result of:

1. complying with any instruction which the Engineer may issue to the Contractor in connection therewith,
2. any proper and reasonable measures approved by the Engineer which the Contractor may have taken in the absence of specific instructions from the Engineer.

12-3 Before certification to the provision of GCC (12-2) above, the Engineer shall review as to whether the natural conditions in any similar activities of the Works were more favorable than expected, then the Engineer shall reserve the right to estimate the fair deduction relative to similar conditions, subject that such estimates shall not result in any net decrease to the Contract Price.

12-4 The provision of GCC (12-2) and (12-3) of this Clause is to apply solely on Permanent Works site.

## 13- Contractor’s Personnel and Workers

13-1 The Contractor shall employ on the Site for the construction and maintenance of the Works:

1. Engineers, technicians and experienced and skillful foremen for the work they are employed to execute.
2. Sufficient number of skilled, semi-skilled and unskilled workers for the construction and maintenance of Works in a satisfactory and timely manner.

13-2 Engineer’s right to object: The Engineer shall have the right to object to the employment assignment of any person and to require the Contractor to remove forthwith from the Works any person with proven misconduct or who is incompetent or negligent in the proper performance of his duties and such person shall not be employed again in the Works without the written permission of the Engineer. Any person so removed from the Works shall be replaced as soon as possible by the Contractor with a competent substitute.

13-3 Wages Records and Others: The Contractor shall, in the course of performing its business in the Kurdistan Region of Iraq, keep records of payment and working hours and any other relevant financial records, and shall upon the Engineer’s request, provide such records that show the wages paid and, as much as possible, the working hours of the Contractor’s personnel for inspection by the Engineer.

13-4 Periodic Reports of Personnel: The Contractor shall provide the Engineer with monthly reports, to the details prescribed by the Engineer, which shall include supervisors, number of workers of their various ranks employed at site from time to time by the Contractor, including its sub-contractors at site.

13-5 Other Employment Requirements: Provisions of Social Security and Labour Laws shall be adhered to in all matters concerning the workers with specific consideration to the following:

1. Employment of Workers: The Contractor shall take all necessary arrangements in respect of employment of workers from local sources or elsewhere for the construction of Works, including provision and maintaining every suitable and necessary transportation means, accommodation units, Offices, restaurants and sanitary facilities at Site to the satisfaction of the Engineer.
2. Requirements of On-site Discipline and Security: The Contractor shall be responsible for decent conduct of all his personnel, workers and others who are present on the Site and shall take all necessary precautions during the progress of Works and to exert all efforts to prevent any illegal actions or disorder by and among his employees and workers as well as others deployed for the Works and provide for the safety of the inhabitants and property of those who live at Site and in the vicinity thereof. However, the Contractor shall be prohibited from establishing his own police force or to obstruct the procedures of the official police force that has the right to access any location of the Site at all times within the scope of exercising their duties.
3. Professional Safety Requirements: The Contractor shall be responsible for the adequacy, safety and stability of all performed operations at the site for the execution of Works, and shall practice all the safety rules and procedures and supply his workers and employees at site with the necessary means and outfits that prevent them from exposure to harm or accidents. Furthermore, the Contractor shall continuously ascertain that his equipment operating at site are fully equipped with safety means and alarm so as to protect operators and other workers at site.
4. Alcoholic Liquor or Drugs: The Contractor shall not (otherwise than in accordance with the provisions of Laws, Regulations and orders in force in the Kurdistan Region) import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs or permit or ignore any such importation, sale, gift, barter or disposal by his Sub-contractors, agents or employees at site.
5. Arms and Ammunition: Subject to the provisions of Laws in force, the Contractor shall not give, barter or otherwise dispose of to any person or persons any arms or ammunition of any kind or permit or ignore such acts, whether on site or in the context of the Contract.
6. Festivals and Religious Customs: The Contractor shall have due regard to all recognized festivals, days of rest and religious customs in all dealings with its employees.
7. Epidemics: In the event of any outbreak of an epidemic of contagious nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be imposed by the Government of Kurdistan Region of Iraq and the medical or health authorities or the local authorities for the purpose of dealing with and overcoming such epidemics.
8. Observance of Laws and Regulations by Sub-contractors: The Contractor shall be responsible for the observance by his Sub-­contractors of the abovementioned provisions.

## 14- Construction Equipment and Temporary Works

14-1 The Contractor shall at his own expense provide and maintain all Construction Equipment, Temporary Works, materials, machinery and tools for the Works and the transport from and to the Site as well as transport within Works and surroundings and other things of whatever type that are deemed necessary for the execution and maintenance of Works.

14-2 Exclusive Use of Plant, etc... for the Works: All Construction Equipment and Temporary Works and materials provided by the Contractor, when mobilized on Site shall be deemed to be exclusively intended for the construction of the Works and the Contractor shall not remove the same or any part thereof, save for the purpose of moving it from one location of the Site to another, without the written consent of the Engineer which shall not be unreasonably withheld.

14-3 Removal of Construction Equipment and Others: Upon completion of the Works, the Contractor shall remove from the Site all the Construction Equipment and Temporary Works remaining thereon whose ownership does not belong to the Employer in accordance with the contract terms, as well as any residual materials brought to site by the Contractor.

14-4 Employer not Liable for Damage to Construction Equipment and Others: The Employer shall not at any time be liable for the loss of or injury to any of the Construction Equipment and Temporary Works save as mentioned in GCC 21-2 of these conditions.

14-5 Customs Clearance: The Employer shall assist the Contractor upon request in obtaining clearance through the customs of the Construction Equipment and Temporary Works required for the Works.

14-6 Re-export of Construction Equipment and Others: The Employer shall assist the Contractor upon request in procuring any necessary KRG Entity’s consent for the re-export by the Contractor of the Construction Equipment and Temporary Works that have been imported on the basis of temporary importation for the purpose of the Works.

14-7 The Contractor shall provide the Engineer with monthly report of the Construction Equipment in the manner requested by the Engineer.

## 15- Access to Site and Materials Sources

15-1 The Engineer and any person so authorized by him shall at all times have the right to access to and inspect the Site and Works and to all workshops and places where work is being prepared or where materials are being obtained or machinery being manufactured for the Works. The Contractor shall provide every facility for and every assistance to or in obtaining the right to such access.

15-2 During the execution of Works, no one shall be allowed to access the Site except the Contractor and its workers and Sub-contractors and their workers, unless granted a written permission by the Engineer.

## 16- Assignment

16-1 The Contractor shall not assign the Contract or any part thereof or any interest, benefit or commitment therein or thereunder (other than in favor of the Contractor's Bankers for any moneys due or to become due in accordance with the Contract), without the prior written consent of the Employer.

## 17- Sub-Contracting

17-1 The Contractor shall not sub-contract the whole of the Works. Except where otherwise provided under the Contract, the Contractor shall not sub-contract any part of the Works without the prior written consent of the Engineer (which shall not be unreasonably withheld), subject that sub-letting shall not exceed the percentage specified in the Public Procurement Regulation No. 2 of 2016 and the Special Conditions of Contract herein. Such consent, if granted, shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for any act, refusal to act and default of the Sub-contractor, his agents, employees or workmen as if that act, refusal to act and default is attributable to the Contractor or, his agents, employees or workmen.

## 18- Nominated Sub-contractor

18-1 Nominated Sub-contractor: means all specialists, merchants, tradesmen and others executing any work or supplying any goods or services for which provisional sums are included in GCC (59-1) of these conditions, who are named by the Employer or the Engineer and to whom the Contractor is required to sub-contract any work according to the terms and prices approved by the Employer or the Engineer and who, shall in the execution of such work or the supply of such goods, be deemed to be a sub-contractor employed by the Contractor and is hereinafter referred to as “Nominated Sub-contractor”. It is to be provided also that the Contractor shall not be required by the Employer or the Engineer or be deemed to be under any obligation to employ any Nominated Sub-contractor who may decline to enter into a sub-contract with the Contractor containing the following provisions:

1. That in respect of the work or goods the subject of the sub­contract, the Nominated Sub-Contractor shall take upon himself towards the Contractor the same obligations and liabilities as are imposed upon the Contractor towards the Employer by the terms of the Contract and shall protect and indemnify the Contractor from and against the same and from all claims, judicial proceedings damages, costs charges and expenses whatsoever arising out of or in connection therewith or arising out of or in connection with any failure to perform such obligations or to fulfill such liabilities.
2. That the Nominated Sub-contractor shall protect and indemnify the Contractor from and against any negligence by the Nominated Sub-contractor, his agents, workmen and employees and from and against any misuse by him or them of any Construction Equipment or Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as indicated in GCC (18-1-a).

18-2 Dues of Nominated Sub-Contractor: The amounts payable to the Contractor for the works performed or goods and services provided by the Nominated Sub-contractor shall be limited to the following:

1. Actual price paid by or due for payment by the Contractor as indicated in the sub-contract pursuant to the Engineer’s decision.
2. Percentage of actual price referred to in GCC (18-2-a) above as indicated by the Contractor in the Priced Bill of Quantities. This percentage shall be deemed to fully cover the Contractor’s profit, obligations, expense, costs incurred as well as services provided by the Contractor to the Nominated Sub-contractor.

18-3 Payment to Nominated Sub-contractor: Before issuing any payment certificate, under GCC (61 of these conditions, which includes any payment in respect of work performed or goods supplied by any Nominated Sub-contractor, the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments (less retentions) included in previous certificates in respect of the work or goods of such nominated Sub-contractor have been paid or discharged by the Contractor. In case of non-payment, the Employer shall be entitled to pay to such Nominated Sub-contractor directly, upon certification of the Engineer, all payments (less retentions), in accordance with the sub-contract provisions, which the Contractor has failed to pay to such Nominated Sub-Contractor and to deduct the amount so paid by the Employer from any sums due or which shall become due to the Contractor unless the Contrac­tor informs the Engineer in writing that he has reasonable cause for withholding or refusing to disburse such payment and produce to the Engineer reasonable proof that he has so informed such Nominated Sub-Contractor in writing.

 18-4 Provided always that where the Engineer has certified and the Employer has paid directly to such Nominated Sub-contractor as aforesaid, the Engineer shall in issuing any subsequent certificate in favor of the Contractor deduct from the amount thereof the amount so paid directly as aforesaid but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the Contract.

## 19- Assignment of Nominated Sub-Contractor’s Obligations

19-1 In the event of the Nominated Sub-contractor’s commitment, in accordance with the provisions of GCC (18) hereof, towards the Contractor in respect of the work executed or the goods or materials supplied by such Nominated Sub-contractor, extends for a period exceeding that of the Maintenance Period as stipulated in the contract, the Contractor shall, prior to the expiration of the of Maintenance Period, assign to the Employer upon Employer’s request all the benefits of such obligation for the unexpired duration thereof without Employer bearing any costs or expenses therefrom.

## 20- Facilities to Other Contractors

20-1 The Contractor shall in accordance with Engineer’s request provide all suitable facilities to enable other contractors employed by the Employer and their workmen and to the workmen of the Employer and of any other duly constituted authorities who may be employed in the execution on or near the Site of any work not included in this Contract or of any works related to a contract which the Employer may enter into in connection with or ancillary to the Works. If, however the Contractor shall upon the written request of the Engineer make available to any such other contractor or to the Employer or any such authority any roads or ways for which the Contractor is responsible for the maintenance thereof or permit the use of the Contractor's Equipment on the Site or provide any other service of whatever nature to them, the Employer shall pay to the Contractor in respect of such use or service such sum as shall in the opinion of the Engineer is deemed reasonable.

## 21- Care of Works and Exceptional Risks

21-1 Care of Works:

1. The Contractor shall take full responsibility, from commencement to the issuance of the initial acceptance certificate in accordance with GCC (62) of these conditions, for the care of Works and the Construction Equipment and in case of any damage, loss or malfunction to the Works or to any part thereof or to any Construction Equipment from any cause whatsoever (save and except the excepted risks as defined in GCC (21-2) of this Clause). The Contractor shall, at his own cost, repair and make good the same so that at completion the Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract and the Engineer's instructions. In the event of any such damage, loss or malfunction is due to any of the excepted risks, the Contractor shall, if and to the extent required by the Engineer and subject to the provision of GCC (62) hereof, repair and make good the same at the cost of the Employer.
2. The Contractor shall be liable for any damage to the Works caused by him in the course of any operations carried out by him for the purpose of completing any remaining work or complying with his obligations under GCC (33) and (49) hereof.

21-2 Exceptional Risks: The excepted risks are limited to the following and within the boundaries of Kurdistan Region of Iraq:

1. War hostilities, (whether war be declared or not), or invasion act of foreign enemies or rebellion or revolution or insurrection or civil war or usurped power.
2. Riot or commotion or disorder other than such events that arise among the Contractor’s and Sub-contractor’s employees.
3. Atomic power and nuclear radiations risks.
4. Use or occupation by the Employer of any portion of the Works for which the certificate of completion has been issued.
5. Engineer’s design of the Works in accordance with these conditions.

## 22- Insurance of Works and Others

22-1 Without limiting his obligations and responsibilities under GCC (21) hereof, the Contractor shall insure, in the joint names of the Employer and the Contractor, against all losses or damages from whatever cause arising (other than the excepted risks) for which he is responsible under the terms of the Contract and in such manner that the Employer and Contractor are covered by insurance throughout the Completion Duration of Works until issuance of (the initial acceptance certificate) and for loss or damage arising during the (Maintenance Period) arising from a cause occurring prior to the start of the (Maintenance Period) and for any loss or damage caused by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligations under GCC (33) and (49) hereof. The Insurance shall cover

1. Full value of the works.
2. Full value of the Construction Equipment and other resources mobilized by the contractor at Site.

The deductible amount from the insurance company for any occurrence/accident eligible for compensation shall not exceed the amount specified in the Contract Special Conditions.

22-2 The Contractor shall insure in the joint names of the Employer and the Contractor against risks of marine transport for materials and equipment that enter into the Works from their point of origin until arrival to the Site. The insurance cover shall be against all risks including war hostilities, strikes, uprising and commotion.

22-3 The insurances referred to in GCC (22-1) and (22-2) of this Clause shall be affected with an insurance company approved by the Employer, and the Contractor shall produce to the Engineer the policy or policies of insurance and the receipts for payment of the premiums.

## 23- Damage to Persons and Property

23-1 The Contractor shall, except as the Contract stipulates otherwise, indemnify the Employer against all losses and claims for damages and costs of judicial proceedings and penalties and costs of whatever nature that arise due to injury and harm to any person or any property whatsoever (other than surface or other damage to land or crops being on the Site and which are suffered by tenants or occupiers) which may arise out of or in consequence of the construction and maintenance of the Works. Provided always that no provision herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the Employer against any compensation or damages for or with respect to:

1. The permanent use or occupation of the land by the Works or any part thereof or damage to land surface or crops as aforesaid.
2. The right of the Employer to construct the Works or any part thereof on, over, under, in, or through any land.
3. Interference whether temporary or permanent with any right of light, ventilation or traffic or water or other easement rights which is the unavoidable result of the construction of the Works in accordance with the Contract.
4. Injury or damage to persons or property resulting from any act or negligence occurring or committed during the duration of effectiveness of the Contract by the Employer, his agents, employees, or its other contractors (not employed by the Contractor) or in respect of any compensation claims, judicial proceedings expenses, compensation costs, charges, and penalties in respect thereof or in relation thereto. Provided further that for the purposes of this clause the expression “Site" shall be deemed to be limited to the area defined in the Contract and shown on the drawings in which land and crops will be disturbed or damaged as an inevitable consequence of the execution of Works.

The Employer shall compensate the Contractor against all claims for compensation, judicial proceedings expenses, compensation costs, charges and penalties in respect of the matters referred to in the provisions of Sub-Clauses (a, b, c and d) of this clause.

## 24- Third-Party Insurance

24-1 Third-Party Insurance: Before commencing the execution of the Works, the Contractor (without limiting his obligations and responsibilities under GCC (23) hereof) shall insure against any damage, loss or injury which may occur to the following, by or arising out of the execution of the Works or in the implementation of the Contract other than due to the matters referred to in GCC (23-1) (a, b, d) hereof:

1. Civil liability against third party.
2. The property of the Employer except the Works, but including portions of the Works that have been deemed accepted by the Employer as being completed in accordance with the Contract.
3. Employer’s personnel.

24-2 Minimum Amount of Third Party Insurance: Such insurance shall be affected with an insurance company in Kurdistan Region of Iraq in compliance with the terms approved by the Employer and for at least the amount stated in the Special Conditions hereof. The Contractor shall produce to the Engineer the policy(ies) of insurance and the receipts for payment of the premiums.

## 25- Accidents or Injury to Workmen

25-1 The Employer shall not be liable for or in respect of any damages or compensation payable under law in respect or in consequence of any accident or injury to any workman or other person employed by the Contractor or any Sub-contractor, save and except an accident or injury resulting from any act or default of the Employer, his agents or employees.

25-2 The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation and against all claims, demands, proceedings costs, charges and expenses whatsoever in respect thereof or in relation thereto; all without breach to the obligations stated in the provisions of the prevailing laws.

## 26- Failure by Contractor to provide insurance

26-1 If the Contractor fails to affect and keep in force the insurances referred to in GCC (22) and (24) hereof or any other insurance which he may be required to affect under the terms of the Contract, then and in any such case, the Employer may affect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and deduct the amount so paid by the Employer including related administrative overheads from any amounts due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

26-2 If the Contractor is unable to provide for a comprehensive insurance cover against risks which are required to be covered by the Contractor under the Contract then he shall exert every effort to obtain the best insurance cover available and even in case of securing a wider insurance cover than the one which an insurance company in Kurdistan Region of Iraq could offer, such an insurance shall only e obtained subsequent to its written approval by the Employer by or through an insurance company operating in Kurdistan Region of Iraq.

 26-3 The Contractor's fulfillment of the insurance requirement or the insurance incomprehensiveness of all risks or of all sums does not relieve the Contractor from his liabilities and obligations under the Contract.

 26-4 The Contractor shall notify the Employer and the insurance company of any incident or accident arising that requires such notification as called for by the terms of the insurance policy in accordance and for all types of insurance cover required under the Contract. The Contractor shall be responsible for any loss, claims, judicial proceedings, expenses and costs whatsoever as a consequence of or by reason of any default by the Contractor in complying with the aforesaid requirements.

 26-5 Any payment received in respect of the insurance policies during its term of validity in accordance with the Contract shall be payable to the Employer who pays afterwards the same to the Contractor in the sums and times certified by the Engineer as being reasonable and just in connection with the Contractor’s progress in the rectification of the damage and loss as long as, in the Engineer’s opinion, that such rectification is essential for the proper performance of the works or the construction and maintenance of the Works. The Contractor shall bear the difference in the case that the amounts received from the Insurance Company in Iraq Kurdistan Region are not sufficient for the aforesaid purposes.

## 27- General Obligations

27-1 Use of Local Material: The Contractor shall seek to use locally procured equipment and materials for the Works, whether naturally available or manufactured in the Kurdistan Region of Iraq, subject that such materials and equipment are strictly in conformity with the Specifications with appropriate terms of delivery that comply with the Program indicated in GCC (38) hereof. The Engineer shall certify as to whether the specifications or terms of delivery comply with the requirements (specifications) or the said Program. However, if the Engineer certifies in writing that the aforesaid materials and equipment are:

1. not compliant with the Specifications, or
2. the delivery terms do not comply with the Program.

then in either case, permission should be granted to the Contractor to import such materials and equipment to Kurdistan Region of Iraq.

27-2 Permission for custom-free temporary entry: The Contractor (if not a local resident of Kurdistan Region of Iraq) shall be granted permission, to import from abroad the Construction Equipment and Temporary Works to Kurdistan Region of Iraq on the basis of temporary custom-free entry, providing that such equipment and materials are essential for the construction and maintenance of the Works in accordance with the certification of the Engineer and related approvals of the Kurdistan Regional Government . In the case of issuance of such approval and certification as aforesaid, the Contractor shall be prohibited from any re-export, marketing, leasing, exchanging or any other activities for such equipment and materials, including of any surplus prior to receipt of written permission from the Engineer. Upon receipt of such permission, the Contractor shall be charged relevant import duty and customs charges, whenever applicable.

27-3 Explosives: In case of necessary usage of explosives for the execution of the Works, then the Contractor shall have such explosives procured, transferred, stored and used in accordance with prevailing laws, regulations and instructions and subject to the Engineer’s approval, provided that those materials are kept reasonably distant from the Permanent Works site.

27-4 Public Utilities: The Contractor is entitled to make use of public utilities such as electricity, water, telephone, telex and similar at Site or vicinity thereof from local networks in accordance with relevant authorities’ approval at his own cost, for the purpose of Works. The Contractor shall, at his own cost, provide the necessary connections for the proper use of those services and shall comply with all requirements and regulations of the concerned authorities to that effect. In the case of inability to make use of such services, the Contractor shall, at his own cost, provide for alternative arrangements to fulfill his needs, subject to Engineer’s consent to that effect.

27-5 Guarding and Lighting: The Contractor shall provide and maintain at his own cost all lighting means, security guards, controls and fencing in connection with the Works until issuance of the initial acceptance certificate under GCC 62 hereof as and when and where necessary or required by the Engineer or Engineer's Representative or by any duly constituted authority for the protection of the Works or for the safety and convenience of the public or others or to secure their essential needs.

27-6 Interference with Traffic and Adjoining Properties: All operations necessary for the execution of the Works shall be carried out in compliance with the requirements of the Contract in a manner that does not interfere unnecessarily or improperly with the public convenience or the access to the use and occupation of public or private roads and footpaths or to other properties whether in the possession of the Employer or of any other person. The Contractor shall protect and indemnify the Employer in respect of all claims for compensation, judicial proceedings expenses, compensation costs for damages, penalties and charges whatsoever arising out of or in relation to any such matters insofar as the Contractor is responsible thereof.

27-7 Expenses for right of Way and others: The Contractor shall bear all the expenses and fees required for obtaining the right of way in order to access the Site.

27-8 Other Obligations

The Contractor shall be bound also to:

1. pay to the relevant authorities (Kurdistan Regional Government of Iraq) all respective import fees, commission and the like, in case the Contractor desires to dispense with any surplus tools, equipment and materials that were exempted from such fees for usage in the Works, whether disposed of during or upon completion of the Works within the boundaries of the Kurdistan Region of Iraq.
2. furnish the Kurdistan Region’s Statistics Commission with the necessary statistical data in accordance with Statistics Law in force

27.9 Obligations under GCC (27): The Contractor shall bear all costs and expenses related to its obligations under this Clause. All such costs and expenses are deemed to be included in its bid prices.

## 28- Compliance with Provisions of Laws, Regulations

28-1 The Contractor, by virtue of signing this Contract, shall be deemed to have been aware of all the prevailing requirements and legislative practices in Kurdistan Region of Iraq where the Works are to be performed.

28-2 The Contractor shall comply in every aspect with the provisions of laws or bylaws or decrees or orders as well as instructions, statements or decisions of local public administrations or other constituted entities. The Contractor shall secure and indemnify the Employer against all compensations and liabilities whatsoever arising from a breach to any of those Laws or Bylaws or Decrees or Orders and others as aforesaid.

The Contractor shall give all notices and shall pay all charges that are mandatory in accordance with those laws or bylaws or decrees or orders and others as aforesaid.

28-3 Compliance with the regulations and bylaws relating to protection of environment and mitigation of pollution throughout the execution of the Works.

## 29- Fossils, Antiquities and Others

29-1 Subject to the provisions of the related Laws, all fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interests discovered on the Site shall be the absolute property of the Employer and the Contractor shall take adequate precautions to prevent his workmen or any other persons from removing or damaging any such articles or things and shall immediately upon discovery thereof and before removal inform the Engineer's Representative of such discovery and carry out, at the expense to the Employer, the Engineer's orders as to the required arrangements of the same .

## 30- Patent Rights, Royalties and Confidentiality of Contract Documents

30-1 The Contractor shall protect and indemnify the Employer from and against all claims and judicial proceedings for or on account of infringement of any patent right, franchise or trademark or brand or other protected rights in respect of any Construction Equipment, machine or plant or work or materials used for or in connection with the Works. The Contractor shall also protect and indemnify the Employer against all claims for compensation, judicial proceedings expenses, compensation costs, damages, charges and penalties whatsoever in respect thereof or in relation thereto. Except where otherwise specified, the Contractor shall pay all shipment charges, other royalties, rental charges and other payments or compensation (if any) for procuring stone or sand or gravel or clay or other materials required for the Works.

30-2 The Contractor and Employer hereby both undertake to keep confidential all information related to the Contract and the Works and shall not disclose it to any third party. The Contractor, Sub-contractors and suppliers of goods and materials as well as anyone who takes part in the execution of the Works shall not publish or distribute any articles or films or photos or deliver lectures or provide any information relating to the Works or adjacent structures to the Site unless approved in writing by the Engineer in accordance with the terms set by him.

## 31- Transport and avoidance of damage to Public utilities

31-1 Loading and Discharge Conditions: The Contractor shall undertake all measures and research related to the loading, discharge and shipment of all Construction Equipment, Temporary Works and materials required for the Works, and shall undertake all necessary investigations in relation to maximum load that can be handled at ports and shipment to the Site or of travel by land, railway or river and in particular the maximum load capacity of bridges and culverts. The Contractor shall use every precaution to prevent any damage or harm to any of the highways or bridges connecting the Site or on its route by the traffic of the Contractor or any of his Sub-contractors.

31-2 Special loads: Should it be necessary for the Contractor to transport one or more loads of Construction Equipment and machinery or pre-fabricated units or parts of work units over a highway or bridge and the transport whereof is likely to damage any highway or bridge unless special protection or strengthening is carried out, then the Contractor shall, before transport of the load on such highway or bridge give notice to the Engineer of the weight and other particulars of the load to be transported and his proposals for protecting or strengthening the said highway or bridge. Unless within thirty days of the receipt of such notice the Engineer shall by counter-notice direct that such protection or strengthening is unnecessary, then the Contractor shall carry out such proposals or any modification thereof that the Engineer requires and if there is no item or items in the Priced Bill of Quantities or other (contract documents) for pricing of the necessary works for the aforementioned protection or strengthening , the costs and expenses thereof shall be paid by the Employer to the Contractor.

## 32- Cleaning of Site

32-1 The Contractor shall always keep the site clean and in an orderly manner during progress of Works, and shall store and dispose of the Construction Equipment and surplus materials and shall clear away and remove from Site any obstacles, rubbish, scrap and Temporary Works when there is no further need thereto, in accordance with the approval by the Engineer.

32-2 Upon completion of the Works, the Contractor shall clear away and remove from the Site all Construction Equipment, surplus materials, rubbish and Temporary Works of every kind and leave the Site and Permanent Works clean and in an adequate condition to the satisfaction of the Engineer.

## 33- Maintenance Period or Defects Notification Period

33-1 Maintenance Period or Defects Notification Period: In these conditions the expression (period of maintenance or defects Notification period) shall mean the period of the following twelve months (Unless otherwise specified in the Contract Special Conditions), calculated from the date of completion of the Works indicated in the initial acceptance certificate in accordance with GCC (62) hereof. In the event of more than one certificate having been issued by the Engineer under the said clause, the Maintenance Period or Defects Notification Period shall be calculated from the respective dates so certified and the expression Works shall be construed in relation to the (Maintenance Period) in case of multi certificates to the section indicated by that certificate.

33-2 Execution of Maintenance Works and Defects during Defects Notification Period:

1. With the intent that the Works shall, during the Maintenance Period/Defects Notification Period, be in full compliance with the Contract and in as good and perfect a condition (reasonable depreciation and misuse excepted) to the satisfaction of the Engineer or Employer or their representatives, the Contractor shall, according to an inspection conducted by the Engineer or his delegate prior to expiration of the Maintenance Period, execute all such works of repair, adjustments, reconstruction, rectification and making good of defects, imperfections, cracking or other faults as may be required in writing by the Engineer or Employer or their representatives during the Maintenance Period/Defects Notification Period or within fourteen days after its expiration.
2. All maintenance works provided in GCC (33-2-a) shall be executed by the Contractor at his own expense if the necessity thereof shall in the opinion of the Engineer be due to the use of materials or workmanship which are not in accordance with the Contract or due to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied under the Contract.

33-3 If in the opinion of the Engineer such maintenance works are due to any other cause or due to reasons beyond Contractor’s control, the value of such works shall be paid to the Contractor as if they were additional work, following verification thereto.

33-4 Contractor’s Failure to Carry out Maintenance works: If the Contractor fails to perform any such work, required by the Engineer, as aforesaid, within reasonable time period from being notified in writing, the Employer, without being necessary to obtain a judicial permission, may carry out such work, by his own workmen or by other contractors in a manner acceptable to the Engineer. If such works are, in the opinion of the Engineer, those which the Contractor should have executed at the Contractor's own cost in accordance with the Contract, the Employer may request the Contractor to reimburse the cost thereof or shall deduct the same from any amounts due or that will become due to the Contractor. The Engineer or the Engineer’s representative shall always, where possible and reasonable, inform the Contractor in writing of any measures taken in this regard.

## 34- Urgent Repairs

34-1 If by reason of any accident or failure or other event occurring to or in connection with the Works or any part thereof either during the execution of the Works or during the Maintenance Period, any remedial or other work or repair shall in the opinion of the Engineer or the Engineer 's Representative be urgently needed for safety reasons whence the Contractor is unable or unwilling urgently to perform such work or repair, the Employer may on his own or using other workmen perform such work or repair as the Engineer or the Engineer's Representative may consider necessary. If the work or repair so performed by the Employer is work ,which in the opinion of the Engineer, the Contractor was liable to do at his own expense under the contract, all costs and charges properly incurred by the Employer in so doing shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any amounts due or which will become due to the Contractor, provided always that the Engineer or the Engineer's Representative shall as soon after the occurrence of any such action as may be reasonably practicable notify the Contractor thereof in writing.

## 35- Notices

35-1 Notices to Contractor: Any notices or warnings to be given to the Contractor shall be deemed correct under the terms of the Contract if they were sent by post as registered mail or by email or deposited at the Contractor's place of business. In the event of the Contractor being a foreign company, such notices shall be sent to or at its registered office in Kurdistan Region of Iraq or its headquarters in accordance with the address fixed in the Contract’s Special Conditions.

35-2 Notices to Employer or Engineer: Any notices to be given to the Employer or the Engineer shall be deemed correct under the terms of the Contract if they were sent by post as registered mail or E-mail or delivered to the address/es fixed in the Contract Special Conditions.

## 36- Collection of Debts

36-1 The debts arising as a result of the Contractor’s breach to the provisions of this Contract shall be recovered in accordance with the prevailing Law of Public Debts Recovery.

## 37- Applicable Law to the Contract

37-1 The Contract shall be governed, with due implications therefrom, by the provisions of legislations and regulations of the Government of Kurdistan Region of Iraq.

# Chapter II – Control of Implementation Duration

## 38- Submission of the Program

38-1 The Contractor shall, within the period indicated in Contract Special Conditions, submit to the Engineer, for information purposes, a program showing the sequence and timelines of the Works phases and activities as well as the work methods which the Contractor proposes for execution of the Works and it should be supplemented with the schedule of monthly cash flow expected to be paid to the Contractor by the Employer against monthly progress of the Works in accordance with the aforesaid program. The Engineer shall notify the Contractor within a period not exceeding 14 days of any discrepancy or inconsistency between the program and the Contract requirements. The Contractor shall, upon the request by the Engineer or Engineer's Representative, furnish for their information particulars in writing of the Contractor’s arrangements for performing the Works and of the Construction Equipment which the Contractor intends to provide or use or construct as the case may be. The submission of such program to the Engineer or furnishing of such information shall not relieve the Contractor of any of his duties or responsibilities under Contract.

38-2 the Contractor shall implement the program unless otherwise instructed in writing by the Engineer in accordance with GCC (38-1).

38-3 The Contractor shall submit for Engineer’s information the updated program within the time periods indicated in Contract Special Conditions including the Contractor’s forecast of the cash flow in accordance with this updated program. In case of the Contractor’s failure to submit the said updated program within the indicated time periods, the Engineer shall withhold from the subsequent payment certificate the amount indicated in Contract Special Conditions. This amount shall be remaining withheld by the Engineer until it becomes due in the payment certificate that follows the month of the Contractor’s submission of the updated program.

38-4 Any update to the program submitted by the Contractor to the Engineer for his information shall show the actual progress of all activities comprising the Works and the impact thereof on the completion of the remaining Works including any change in the sequence of the execution of the aforesaid activities. The updated program should also show the implications of the variation orders and time extensions which have been previously approved by the Engineer.

## 39- Commencement of Works

39-1 The commencement date shall be as specified in Contract Special Conditions. The Contractor shall commence the Works and shall timely proceed with the same and without delay except as may be expressly approved or ordered by the Engineer or is outside the scope of control of the Contractor.

## 40- Possession of Site

40-1 Delivery of the Site: Except as otherwise indicated in the Contract Special Conditions, the Employer shall place at the Contractor’s disposal that portion of the Site that is required to enable the Contractor to commence and proceed with the construction of the Works in accordance with the program referred to in GCC (38) hereof or otherwise in accordance with such Contractor’s reasonable proposals submitted with a written notice to the Engineer. The Employer shall from time to time place other portions of the Site at the Contractor’s disposal in accordance with the Works program in the required manner to enable the Contractor to proceed with the timely execution of the Works in accordance with the program or the aforesaid Contractor’s proposals (as the case may be). If the Contractor suffers delay due to reasons of the Employer’s failure to permit the Contractor from possessing the Site in accordance with provisions of this Clause, the Engineer, upon receipt of Contractor’s written request, shall estimate the additional period to complete the Works as well as any suitable compensation to which the Contractor shall become entitled against losses (if any) incurred and the Engineer shall recommend to the Employer for their respective payment through the Contractor’s monthly progress payment certificates.

## 41- Temporary Suspension of Works

41-1 Temporary Suspension: The Contractor shall, upon Engineer’s written instruction referred to in this Clause as the (Suspension Order), suspend temporarily the progress of the Works or any part thereof for such time or times and in such manner as the Engineer may consider necessary, and shall during such suspension period undertake to properly protect and secure the Works in the manner deemed necessary as per the opinion of the Engineer. The extra direct expenses incurred by the Contractor as a result of complying with this (Suspension Order) in accordance with this Clause shall be borne and paid by the Employer, unless such temporary suspension is stipulated in the Contract or shall be deemed necessary for the performance of the Works in a proper manner or by reason of the climatic conditions that may affect the safety and quality of Works or due to a default on the part of the Contractor.

As a condition for the recovery of any of those additional expenses, the Contractor shall submit a written notice of his intention to claim for compensation to the Engineer within thirty days from date of (Suspension Order). The Engineer shall assess and determine such additional expenses to be paid to the Contractor in respect of such claim as shall be deemed, in the opinion of the Engineer, to be fair and reasonable.

41-2 Suspension Lasting More Than 90 Days: If due to a (Suspension Order), the progress of the Works or any part thereof shall be suspended for a consecutive period exceeding 90 days, the Employer and Contractor shall seek all means and possible ways to resume progress of Works within an additional period of (30) days from Employer’s receipt of Contractor’s request in this respect, and if the Works cannot be resumed after the lapse of this period, the Contractor shall be entitled to terminate the Contract in accordance with GCC (67) – Termination by the Contractor. If this suspension relates to a part of the Works, the Contractor shall be entitled to delete that part of the Works and such deletion shall be considered a variation order in accordance with GCC (57), and the Contractor shall become entitled to any respective dues resulting from such deletion in accordance with GCC (58).

## 42- Time for Completion (Completion Duration) of the Works

42-1 The Contractor shall complete the Works within the time stated in the Contract calculated from the day of commencement of the Works indicated in GCC (39) including any time extension as granted in accordance with GCC (43) hereof, subject to consideration of any Contract requirements in respect of completion of any part of the Works prior to completing the whole Works.

## 43- Extension of Completion Duration of the Works

43-1 The Contractor may request the extension of Completion Duration of the Works in the following cases:

1. If any increase or variation occurs in the Works whether qualitative or quantitative which affects the progress of the Works in a manner that prevents completion of the Works within the Completion Duration of the Works.
2. If the delay in completion of Works was due to causes or procedures relating to the Employer or to any duly constituted authority or due to other contractors employed by the Employer.
3. If exceptional circumstances, which are not attributable to the Contractor and which could not be foreseen or avoided, develop subsequent to entry to force of this Contract and which result in the delay of the completion of Works within the Completion Duration of Works.

43.2 For the application of provisions of GCC (43-1) of this Clause, the Contractor shall submit a request to the Engineer within (30) days from the date of occurrence of the cause that justifies the Contractor’s request for time extension stating the full and exact details of its request for extension of time and the Engineer shall assess the request and the Employer shall decide upon it within a period not exceeding 60 days of the receipt of such request. Any requests for time extension shall not be admitted after issuance of the order of completion referred to in GCC (62) thereof.

## 44- No Night or Friday Work

44-1 Subject to the provisions of the Labour Laws in force, none of the Permanent Works activities shall be performed during the night or on Fridays or on national holidays without Engineer's Representative permission in writing, except in circumstances when the work is unavoidable or absolutely necessary for saving of life or protection of property or for the safety of the Works in which case the Contractor shall immediately advise the Engineer's Representative thereof. The provisions of this Clause shall not be applicable in the case of work which is customarily performed by rotation.

## 45- Progress of Works

45-1 All materials, plant and labour to be provided by the Contractor under the Contract and the work methods, manner and speed of execution and maintenance of the Works shall be, with respect to quality and execution methodology, in compliance with the Works program referred to in GCC (38) thereof, and to the Engineer’s satisfaction. Should the rate of progress of the Works or any part thereof be at any time in the opinion of the Engineer too slow to ensure the completion of the Works by the indicated date or extended time for completion, the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps, to which the Engineer shall not object without reasonable justification, to expedite progress in order to complete the Works by the indicated date or extended time for completion. If the work is being performed during the daytime only and the Contractor requests permission to work at night in addition to daytime work or on Fridays or national holidays, then the Engineer’s permission should not be withheld save for justifiable reason. If Engineer’s permission is granted, the Contractor shall not be entitled to any additional expenses for doing so.

# Chapter III – Quality Control

## 46- Inspection and Tests

46-1 Quality of Materials, Workmanship and Tests: All materials and workmanship shall be of the respective kinds specified in the Contract and in accordance with the Engineer's instructions and shall be subjected from time to time to such tests as the Engineer directs at the place of manufacture or fabrication or on the Site or on the locations indicated in the Contract or at all or any of such places. The Contractor shall provide assistance, instruments, machines, labour and materials as are required for examining, measuring, and testing any work or quality or weight or quantity of any material used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the Engineer.

46-2 Cost of Samples: All samples shall be supplied by the Contractor at his own cost unless otherwise indicated in the Contract.

46-3 Cost of Tests: The cost of conducting any test shall be borne by the Contractor if such test is clearly provided for in the Contract documents and the Contractor shall further bear the cost of any tests under load or any inspection that aims to ascertain the fitness-for-purpose of the design of any executed work whether wholly or partially to the objectives of its design if the Contract documents have so indicated in sufficient details that enables the Contractor to price or consider the cost of such tests in his bid.

46-4 Cost of Tests not listed in the Contract and Others: The Contractor shall bear the cost of such test if the test result shows that the workmanship or materials quality were not in accordance with the provisions of the Contract or the Engineer's instructions in the following two cases:

1. If the test is not provided for in the Contract documents or not specified in sufficient details as mentioned in GCC (46-3).
2. If the test is provided for in the Contract documents, however the Engineer orders that it is to be conducted by an independent person outside the Site or the place where the tested materials are manufactured or fabricated. The Employer shall bear the cost of those tests as stated in (a and b) of this Sub-Clause, if the test results show that the workmanship or materials quality are consistent with the Contract or the Engineer's instructions.

## 47- Boreholes and Exploratory Excavation

47-1 If at any time during the execution of the Works, the Engineer requires the Contractor to make boreholes or to perform exploratory excavation, then such requirement shall be instructed in writing and shall be deemed to be an additional work instructed under the provisions of GCC (57) hereof. The cost of such boreholes and exploratory excavation shall be to the Employer's own expense unless otherwise provided for in the Contract.

## 48- Uncovering and Examination of Works

48-1 Examination of Works before Covering-up: No work shall be covered up or put out of view without the approval of the Engineer or the Engineer's Representative and the Contractor shall avail sufficient opportunity for the Engineer's Representative to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereupon.

The Contractor shall give due notice to the Engineer's Representative whenever any such work or foundations are ready or about to be ready for examination and the Engineer's Representative shall without unreasonable delay attend for the purpose of examining and measuring such work or of examining such foundations unless the Engineer’s Representative considers such examination unnecessary and advises the Contractor in writing, accordingly.

48-2 Uncovering and Making Openings: The Contractor shall uncover any part or parts of the Permanent Works or make openings in or through the same as the Engineer directs from time to time, and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirements of GCC (48-1) of this Clause and are found to be executed in accordance with the Contract, the expenses of uncovering and making openings in or through the Permanent Works and reinstating and making good shall be borne by the Employer or otherwise all such expenses shall be borne by the Contractor.

## 49- Contractor to Search

49-1 The Contractor shall, if required by the Engineer in writing and in accordance with his instructions, search for the cause of any defect or imperfection or fault that appears during the Completion Duration of the Works or the (Maintenance Period). If such defect or imperfection or fault shall be one for which the Contractor is not liable under the Contract, the cost of the work performed by the Contractor in searching as aforesaid shall be borne by the Em­ployer. But if such defect or imperfection or fault shall be one for which the Contractor is liable, the cost of the work performed in searching as aforesaid shall be borne by the Contractor and he shall in such case repair or rectify and make good such defect or imperfection or fault at his own expense in order that the Works become consistent with the Contract in every aspect.

## 50- Approval of Materials and Others Not Implied

50-1 The application of GCC (14) hereof shall not be deemed to imply any approval by the Engineer of the materials or others referred to in the aforesaid and the Engineer may reject any such materials or others at any time.

## 51- Rejection

51-1 Removal of defective materials and Non-Compliant Works: The Engineer may during the progress of the Works have the authority to order in writing from time to time in respect of:

1. The removal from the Site within such time or times as may be specified in such order of any materials which in the opinion of the Engineer are not in accordance with the Contract and the substitution of proper and suitable materials.
2. The removal and proper re-execution of any work which in respect of materials or workmanship is not, in the opinion of the Engineer, in accordance with the Contract (notwithstanding any previous test thereof or any interim payment already made).

51.2 Engineer’s Right to Stop Work: If it becomes apparent to the Engineer that a certain work is being performed in an improper manner or by using substandard materials or by unskilled labour whence it should require the employment of skilled labour or by any method that complies with the Contract, then the Engineer shall order the Contractor to immediately stop such inferior work through a direct order to the Contractor superintendent or chief of labour or head of working group stating his justifications for such order. This stoppage of work shall continue until the Contractor undertakes corrective procedures that meet the Engineer’s satisfaction. Any order by the Engineer to stop work as aforesaid should be carried out immediately and the Contractor shall not be entitled for any financial compensation or extension to the Completion Duration of Works.

51-3 Default of the Contractor in Compliance with Orders to Remove defective Works and Materials: In case of default on the part of the Contractor in carrying out the orders to remove defective works and materials, then the Employer shall be entitled to execute the aforesaid work at the Contractor’s account , and all expenses consequent thereupon shall be borne by the Contractor and shall be recoverable from him by the Employer from any amounts due to the Contractor or to be deemed and settled as a debt of the Contractor, subject that the aforesaid shall not affect any of the Employer’s claims under GCC (56) thereof.

# Chapter IV – Cost Control

## 52- Quantities and Prices

52-1 The quantities set out in the Priced Bill of Quantities are the estimated quantities of work and they are not to be considered as the actual and correct quantities of the Works to be executed by the Contractor in fulfillment of his obligations under the Contract.

52-2 Each and every item of the Priced Bill of Quantities shall be deemed to comprise all what is required to execute that item in respect to material, work, Construction Equipment, Temporary Works, Contractor’s profit and any other costs or expenses of whatsoever kind, unless otherwise indicated by the relevant item.

## 53- Works to be Measured and Measurement Procedures

53-1 Measurement of the Works shall be carried out on the basis set out in the Standards Guide of Quantity Survey of Building and Civil Engineering Works prevailing in Iraq.

53-2 The Engineer shall, except as otherwise stated, indicate and determine by measurement method indicated in GCC (53-1), the value of the executed work.

53-3 The Engineer shall, when he requires any part or parts of the Works to be measured at Site, serve notice to the Contractor who shall forthwith attend or send a qualified agent to assist the Engineer or the Engineer's Representative in carrying out such measurement and shall furnish all means required to make the measurement. Should the Contractor not attend or neglect or omit to send such agent, then the measurement made by the Engineer or so approved thereby shall be taken to be the correct measurement of that portion or section of Works.

53-4 For the purpose of measuring such executed work which is to be measured through records and drawings, the Contractor shall prepare the records and drawings of such work on month by month basis and in accordance with the stages and program and the manner that the Engineer determines or approves. The Contractor shall furnish such records and drawings to the Engineer’s Representative and agree with him on measurement details. The Contractor shall complete all requirements for the final measurement of Works as aforesaid prior to the completion of the Works.

53-5 In the case of dispute between the Engineer’s Representative and the Contractor in respect of the measurement referred to in GCC (53-3) and (53-4) above, then the dispute matter shall be referred to the Engineer to decide in respect of that dispute.

## 54- Advance Payment

54-1 If so stated in the Contract Special Conditions and after signature of the Contract, the Engineer shall approve the t Contractor’s request for advance payment which is deemed as a non-profit loan to enable the Contractor mobilize necessary resources to commence the Works and to access the Site, only after:

1. Contractor’s submission of an unconditional and irrevocable bank guarantee in the name of the Employer with the same value and currency, and the Contractor shall maintain the validity of such guarantee until Employer’s recovery of full value of the advance payment.
2. The Employer shall recover the value of the advance payment through monthly installments as specified in the Contract Special Conditions, to be deducted from the monthly payment certificates due to the Contractor in accordance with the amounts or percentages from each certificate as stated in the Contract Special Conditions subject that the full value shall be recovered whenever the total sum of the paid certificates reaches 80% of Contract value.

54-2 If the Employer does not recover the full value of the advance payment prior to issuance of the initial acceptance certificate or work withdrawal or contract termination in accordance with GCC (64) and (65) and (67) hereof, then the unrecovered amount of the advance payment shall be deemed to be a debt on account of the Contractor and should be paid immediately, otherwise the unrecovered amount shall be deducted from the advance payment guarantee.

## 55- Taxes and dues

55-1 The Contractor shall pay all taxes and dues, including stamp duty and other duties in relation to the Contract and required to be paid by any prevailing Laws or Regulations or Bye-Laws or Decrees or Orders and the Contract prices shall be deemed comprehensive for all those taxes and dues (save building permit's fees).

55-2 Should any increase or decrease in taxes and dues referred to in GCC (55-1) of this Clause occur after the date of Contract award and during the Completion Duration of Works, then the Contractor shall have the right to claim the amount of increase as well as the Employer shall have the right to claim or deduct the amount of decrease. The preceding provisions shall be applicable on any variation in the Labour Social Security dues determined under Law or Regulation or Bylaw or proclamation issued according to the Law.

## 56- Delay Damages

56-1 Delay Damages: If the Contractor fails to complete the Works within the time prescribed by GCC (42) hereof or during the approved extended time, then the Contractor shall pay to the Employer the sum stated in the Contract Special Conditions as a compensation for such default. The Employer may, without prejudice to any other method of recovery, deduct the amount pertaining to such delay from any amounts due or which may become due to the Contractor including the bank guarantees, provided that the ceiling amount of the delay damages shall not exceed 10% of Contract Price. The payment or deduction of such delay damages shall not relieve the Contractor from his obligation to complete the Works or from any other of his obligations and liabilities under the Contract.

56-2 Reduction of Delay Damages: If upon issuance of the initial acceptance certificate for (part of the Works) pursuant to GCC )62( hereof prior to the issuance of the same for the whole of the Works, the delay damages shall for any period of delay after the date of such certification of completion be reduced in the proportion of the value of that part to the Contract Price.

## 57- Variations and Variation Orders

57-1 Variations: The Engineer shall, during the execution of Works and prior to issuance of the order of completion, make any variation of the form, quality, and quantity of the Works or any part thereof that may in his opinion be necessary or desirable and for that purpose he shall have the authority to order the Contractor to perform and the Contractor shall perform any of the following with due consideration to the provision of GCC (57-2):

1. increase or decrease the quantity of any work included in the Contract.
2. cancellation of any part of the Works.
3. change the feature, quality and class of any of the Works.
4. change the level, lines, position and dimensions of any part of the Works.
5. order additional work of any kind necessary for the completion of the Works.

No such variation shall in any way invalidate the Contract, but the value (if any) of all such variations shall be taken into account in determining the Contract Price and its completion time.

57-2 The Contractor shall serve a notice in writing to the Engineer immediately after receipt an order for variation to which he may object either because of his inability to timely obtain the required materials or because such order will cause a material change in the sequence of execution of Works or the Completion Duration of the Works. The Engineer, upon receipt of such notice from the Contractor, may either confirm the variation order or amend or cancel the same.

57-3 Variation Orders:

1. No such variation shall be executed by the Contractor pursuant to GCC (57-1) above without the Engineer’s order in writing.
2. The Contractor shall notify the Engineer of any potential increase to any of the items of the Priced Bill of Quantities [save the increase resulting from a variation order pursuant to GCC (57-1-a)] in a suitable period prior to execution of such increase, and the Engineer shall issue the Variation Order in case of certifying the same. Provided that in case the Contractor fails to notify the Engineer of such increase as aforesaid, the Engineer may issue the Variation Order if the Engineer shall consider such increase necessary for the execution of the Works in accordance with the Contract.

## 58- Valuation of Variations

58-1 Valuation of Variations: The Engineer shall determine the amount (if any) which in his opinion should be added to or deducted from the sum named in the Contract in respect of any extra or additional work done or work omitted by his order. If such increase or decrease is related to work items described in the Priced Bill of Quantities, all such work shall be valued pursuant to GCC (58-2) hereof. If the variations are related to works that have no similar or close items in the Priced Bills of Quantities that can be applied to such variations, then suitable prices shall be agreed upon between the Engineer and the Contractor. In the event of disagreement, the Engineer shall fix such prices as shall in his opinion be reasonable and proper.

58-2 Variations to the Items of the Priced Bill of Quantities

1. If the variation relates to part of an item in the Priced Bills of Quantities, then the Contract price of the original item, which is to be amended, shall be considered as the basis for pricing provided that the difference in the cost of materials and labour shall be added or deducted, as the case may be.
2. In case the intended variation is to cover one or more of the items that are included in the Priced Bills of Quantities, then calculation of the price of such item or the substitute items shall be on the basis of the real cost with due consideration to the Contractor’s profit or loss for each item so determined to be amended.
3. For variations that occur on the quantity of any item in the Priced Bills of Quantities, the Contract price of such item shall be applied up to 20% change (in increment or decrement) of the quantity of such item in the Priced Bills of Quantities, provided that the Engineer and Contractor shall agree on a new price should the change in quantity go beyond the aforesaid percentage.
4. In case of a decrease in the quantities of the items in the Priced Bills of Quantities exceeding which exceed a rate of 20% of the quantities stated in the Priced Bills of Quantities, then the Contractor shall be compensated for the profit forfeited by cause of the decrement exceeding the aforesaid percentage. In the case of Contractor is saved from enduring probable loss, then the same principle should be applied to the Employer as well.

58-3 Failure to Agree on Prices: In the case if the Engineer and Contractor fail to reach agreement on any of the prices pursuant to GCC (58-1) and (58-2) hereof, then the Contractor shall proceed with the Works at the prices determined by the Engineer, and the Contractor may confirm his objection by a written notice to the Engineer stating his intention to claim for increase of prices, providing that progress of Works must not be affected by reason thereof.

58-4 Dayworks

1. The Engineer may, if in his opinion it is necessary or desirable, order in writing that any additional or substituted work shall be executed on a dayworks basis. The Contractor shall then be paid for such work in accordance with the conditions and prices set out in the dayworks schedule included in the Contract. The Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to certify the amounts incurred and shall submit to the Engineer quotations for the materials before ordering the same for his approval.
2. In respect of all work executed on a dayworks basis, the Contractor shall during the continued performance e of such work deliver each day to the Engineer's Representative an exact signed list in duplicate of the names, occupation, time and wages of all workmen employed on such work and a signed statement also in duplicate showing the description and quantity of all materials and plant used thereon or thereof. One copy of each list and statement will, if correct or when agreed upon and signed by the Engineer's Representative, be returned to the Contractor.
3. At the end of each month, the Contractor shall deliver to the Engineer's Representative a priced statement of the labour, material and plant used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineer shall consider that for any reason the delivery of such list or statement by the Contractor in accordance with the foregoing provision was impracticable, he may nevertheless authorize payment for such work on the basis of day works (if satisfied as to the time employed and plant and materials used on such work) or at such value of similar work as shall in his opinion be fair and reasonable.

58-5 Compensation Claims and Additions to the Works: The Contractor shall submit to the Engineer's Representative, once every thirty days, an account stating the particulars (as full and detailed as possible) of all claims for any additional expense to which the Contractor may consider himself entitled for reasons that occurred during the preceding (30) thirty days and of all extra or additional work ordered by the Engineer which he has executed during the preceding thirty days. Failure of the Contractor to submit all claim particulars of the costs or additions to the Works shall not bar the Contractor’ right in claiming for the same, but it may affect the degree of its reliability for reason of reduced capacity to verify its particulars with lapse of time. The submission of compensation claims as aforesaid or disapproval of the same by the Engineer shall not relieve the Contractor of his responsibilities in proceeding with the Works.

## 59- Provisional Sums and Contingency

59-1 Provisional Sums included in the Priced Bill of Quantities: Any sums included in the Contract price and incorporated by the Employer under the scope of the Contract and described as such in the Priced Bill of Quantities to execute work or supply of goods or services or as a contingency amount to execute a specific item that may be utilized wholly or partially or not utilized in accordance with instructions and options of the Engineer. The Contract value shall be amended in accordance with the actually spent sums. The Engineer may in this respect order the following:

1. Where work or supply of goods or services is to be executed by the Contractor, the pricing of which is determined in accordance with GCC (58) hereof.
2. Where work or supply of goods or services is to be executed by the nominated Sub-contractor, the pricing of which is determined in accordance with GCC (18) hereof.

59-2 Production of Vouchers, Receipts and Others: The Contractor shall when so required by the Engineer produce all quotations, invoices, vouchers, accounts or receipts in connection with expenditure in respect of provisional sums referred to in this Clause.

59-3 General Provisional Sum of the Contract: The sum allocated by the Employer as a general contingency for the purposes of the Contract and which is not incorporated in the Contract Price, save for the amount to be spent in accordance with the Contract and by the Engineer’s written order.

## 60- Price Adjustment

60-1 The prices shall be adjusted for reason of fluctuations in the cost of the inputs only when so permitted in Contract Special Conditions. If permitted, the sums approved in each payment certificate and for each currency paid by the Employer prior to deduction for reimbursement of the advance payment, shall be adjusted by the application of the specific adjustment factor on the amounts of the payments due for that specific currency

A specific formula for each currency shall be utilized to reflect the variations of the prices of inputs in that currency.

Adjustment Value = Po x [a+b (Ln/Lo) + c (Mn/Mo) + d (En/Eo)] – Po

Note that: a + b + c + d =1

Where:

Adjustment Value = variance in the contractor’s interim payment.

Po = value of interim payment in accordance with the Contract.

Payment after adjustment = (Adjustment Value + Po).

a = constant representing margin of profit and overheads in accordance with the Contract, also the materials that are not subject to adjustment {not included by the constant (c)}.

b = constant representing the percentage of the constituent of personnel and labour wages to the total Contract value.

c = constant representing percentage of the constituent of selected materials of high value and variable market prices (like steel reinforcement, cement, asphalt...etc.) to the total Contract value.

d = constant representing the percentage of the constituent of energy or equipment to the total Contract value.

Ln, Lo = indices for personnel and labour wages in the relevant construction sector in the Kurdistan Region or the country of origin (if adjustment is intended for foreign currency) at each of the base date and adjustment date respectively.

Mn, Mo = indices for the prices of construction materials in the Region or the country of origin (if adjustment is intended for foreign currency) at each of the base date and adjustment date respectively.

En, Eo = indices for the prices of machinery and energy in the Region or the country of origin (if adjustment is intended for foreign currency) at each of the base date and adjustment date respectively.

The Employer shall specify the constants a, b, c and d.

60-2 If the value of the index changes after having being used in a calculation process, the calculation process shall be corrected in the subsequent payment certificate which shall be adjusted accordingly. The value of the index shall be deemed to incorporate all the variations in the Contractor’s costs resulting from fluctuation of the cost of inputs in that specific currency.

## 61- Payment Terms

61-1 Payment for Executed Works

1. The Contractor shall be paid monthly the full value of the executed and approved works in accordance with the prices indicated in the Priced Bill of Quantities and in accordance with the approved drawings of such works. The monthly payment shall be as detailed in Paragraph (b) below:
2. The Contractor shall submit a detailed report (certificate) once a month to the Engineer stating the following:
3. the full value of the work executed until the end of the month of payment.
4. added to it, the value of variations in accordance with GCC (57), then
5. deducting therefrom any previous payment or any corrections therein due to miscalculations in the previous payments (Paragraph k hereof), then
6. application of the price adjustment formula, if applicable, to the amounts due during the month in accordance with GCC (60), then
7. deduction for retention of 10% of the adjusted value of the executed work and such deduction shall continue until reaching a total of 5% of the Contract Price, then
8. addition of the value of the materials stocked on Site with deduction of the value of any of these materials that have already been incorporated into the Works, then
9. the amount stated in Contract Special Conditions shall be deducted for recovery of the advance payment, then
10. deduction of the monetary amounts against delay damages, pursuant to GCC (56), then
11. calculation of any other amounts due to or from the Contractor in accordance with GCC (69) in connection with the mandatory final recommendation of the Adjudicator or GCC (71) – Dispute Settlement.
12. The Engineer shall approve the payment certificate due to the Contractor in accordance with the Contract and Paragraph (b) above within a period not exceeding thirty (30) days from the date of receipt of the payment certificate. The Employer shall disburse the payment to the Contractor within (30) thirty days from Engineer’s approval.
13. The Engineer shall not be obliged to approve any Contractor’s application of payment against the materials supplied to the Site except after having ascertained compliance of type, quantity and value of such materials with the Specifications and verification of the proper storage and protection of such materials at Site are.
14. No payments disbursed to the Contractor shall be deemed as proof of acceptance by the Employer or the Engineer of the Works and materials related to such payments.
15. In case of dispute over any amount demanded by the Contractor or subjected to deduction, payment has to be made to the Contractor of all undisputed amounts, without having to wait for the settlement of the dispute and verification of the exact amount due for payment.
16. Issuance of the initial acceptance certificate shall not waive the Contractor’s right to collect any amounts due in regard of works completed before issuance of such certificate. The same shall apply to the new works agreed to be executed during the Maintenance Period.
17. One-half of the deducted retention monies referred to in GCC (61-1-b) hereof shall be released upon issuance of the initial acceptance certificate, provided that:
18. Final measurement of the Works is done.
19. That there are no debts and claims due to the Sub-contractors or others which are

officially registered with the Employer or after deduction of such debts.

1. The remaining portion of retention money shall be released upon issuance of the final acceptance certificate for the whole Works (in case of multi certificates; from the last one) and after Contractor’s submission of tax certificate issued by the Directorate of Income Tax and the certificate from the Directorate of Social Security and Central Laboratory. The Employer may accept the Contractor’s request to replace the second half of the retention money with an unconditional and irrevocable bank guarantee for the same amount payable to the account of the Employer.
2. The Contractor shall be entitled to be paid interest on the delayed amounts of his due payments in the percentage specified in Contract Special Conditions; such payment of interest is triggered in the case of delayed disbursement for a period exceeding sixty (60) days from the due date for reasons attributable to the Employer or the Engineer.
3. The Engineer may correct or amend any previous payment disbursed, if dissatisfied with the Works or any part of it. He may further deduct the value of any material or machinery supplied by the Employer to the Contractor for the purpose of Works if such deliveries have been damaged due to the Contractor’s negligence or misuse.

61-2 Advance Payment for equipment, plant and Materials: The payment and recovery of the advances for the materials, plant and equipment that are to be incorporated into the Permanent Works shall be done in accordance with the terms stated in the Contract Special Conditions.

61-3 Payment of Foreign Currencies: Should execution of the Works involve supply of materials, machinery and equipment through import from beyond boundaries of Kurdistan Region of Iraq or if recruitment of expatriate workers is necessary for the execution of the Works or any portion thereof, then in such cases, a portion percentage of payment that is to be paid in foreign currency in accordance with the Contract shall be paid in accordance with the conditions stated in the Contract Special Conditions.

61-4 Payment of Final Account to the Contractor: The Contractor shall submit the report (certificate) of the final account to the Engineer within (30) days from issuance date of the final acceptance certificate, stating:

1. The value of all executed Works in accordance with the Contract with deduction of the amount paid by the Employer, and
2. Any other amounts that the Contractor believes due to him in accordance with the Contract.

If the Engineer does not approve the final account report (final certificate) as submitted by the Contractor or seeks clarification thereto, the Contractor shall within (30) days respond to the Engineer’s queries and then re-submit the amended final account report as agreed by the two parties. Upon disagreement between the Contractor and the Engineer and continuation of dispute, the Engineer shall approve the undisputed items in the final account report and submit to the Employer.

All the continued or unresolved disputes shall be settled by the Adjudicator pursuant to GCC (69) – Adjudicator, and GCC (71) – Arbitration. Upon the issue of the decisions concerning resolution of the disputes and disagreements pursuant to the aforesaid Clauses, the Contractor shall re-submit the final account report (final certificate) to the Employer (with a copy to the Engineer) along with the certificate of cessation of Employer’s liability (certificate of discharge). The Employer shall disburse the due payment to the Contractor in accordance with such final account report within (60) days.

# Chapter V – Control of Implementation Completion

## 62- Order of Completion of Works and Initial Acceptance Certificate

62-1 The Contractor shall notify the Engineer in writing declaring that the Permanent Works or any part thereof have been substantially completed (i.e. completed to the extent that they become fit for the purpose which they were constructed for) and that the Works have satisfactorily passed any final test as may be stipulated by the Contract.

62-2 The Engineer, upon receipt of Contractor’s undertaking that any outstanding work (Snag List) shall be completed during a jointly agreed period of time within the Maintenance Period/Defects Notification Period and in the manner decided by the Engineer, shall issue the order of completion and shall either establish a committee for initial acceptance or advise the Employer to do so, within a period not exceeding (14) days from the issuance date of the aforesaid order. The Committee shall inspect the Works and shall prepare minutes establishing the date of actual completion, in accordance to which the Engineer shall issue the initial acceptance certificate of the Works confirming the date of completion and start of the Maintenance Period/Defects Notification Period.

62-3 The Employer shall be deemed to have taken over the Works from the Contractor starting from the date of issuance of initial acceptance certificate. The Engineer shall issue similar certificate for any section of the Works that has been completed in accordance with the Contract prior to the completion of the whole Works and upon Contractor’s written request also for any essential part of the Works that has been completed to the satisfaction of the Engineer or occupied or utilized by the Employer.

62-4 The date of completion of Works confirmed in the initial acceptance certificate referred to in GCC )62-1( hereof shall be the date of cessation of the application of the delay damages (if any) as referred to in GCC 56 hereof.

62-5 The initial acceptance certificate issued in accordance with the aforesaid provisions for any part of the Works that have been occupied or utilized as aforesaid shall not be deemed to be certification of completion of any works in relation to cleaning of the Site or the external appearances that require reinstatement unless clearly stated in that certificate.

## 63- Final Acceptance Certificate

63-1 Certificate of Final Acceptance: The Contractor shall inform the Engineer in writing of the expiration of the Maintenance Period and that he had completed all defects correction work and that the maintenance of Works has been performed as required under the Contract. The Employer shall issue the Final Acceptance Certificate within thirty (30) days from the expiration of the Maintenance Period and (If multi maintenance periods are applied for various parts of the Works; after the expiration of all such periods) or after any works instructed by the Engineer or Employer have been completed to the satisfaction of the Engineer or Employer during the Maintenance Period, pursuant to GCC (33) and (49) hereof, whichever is later. Full effect shall be given to this Clause notwithstanding any previous acceptance of the Works or maintenance or operation or utilization of either the whole of the Works or part thereof by the Employer.

63-2 The Contractor's obligations shall not be deemed performed until the final acceptance certificate is issued by the Employer stating that the Works have been completed and maintained to its satisfaction.

63-3 Cessation of Employer’s Liability and Contractor’s certificate of discharge of Employer’s liability: The Employer shall not be liable to the Contractor for any issue or matter arising out of or in connection with the Contract or the execution of the Works and shall be deemed discharged totally by the Contractor from any right or claim in connection with the Contract unless the Contractor shall have made a claim in writing in respect thereof before issuance of the final acceptance certificate and the payment thereof in accordance with GCC (61-4) in addition to payment of any other claims as settled pursuant to GCC (69) – Adjudicator, and GCC (71) – Arbitration.

63-4 Unfulfilled Obligations: Notwithstanding the issuance of the final acceptance certificate and the settlement of final account and the release of the performance security, the Contractor, [subject to GCC (63-2)], and the Employer shall remain liable for the fulfillment of any obligations, incurred under the provisions of the Contract prior to the issuance of the final acceptance certificate, which remain unperformed after such certificate is issued. For the purposes of determining the nature and extent of any such obligations, the Contract shall be deemed to remain in force between the parties in this respect.

63-5 Access to Works: Until issuance of the final acceptance certificate, the Contractor shall be entitled to, at suitable working times and on his own responsibility and account, access to all parts of the Works whether by himself or by his authorized agent, whose name shall have been previously informed in writing to the Engineer or Employer, for the purpose of inspection of the Works operation and to observe respective performance records and to take notes thereof after securing the Engineer or Employer’s written approval which should not be unreasonably withheld. The Contractor may at his own responsibility and account conduct any test that he deems necessary.

 63-6 Final Acceptance Certificate is an Absolute Proof: The final acceptance certificate constitutes the absolute proof in any judicial proceeding arising from the Contract (Whether by arbitration or others) providing that the Works have been executed in a proper manner and completed in accordance with the Contract and that every procedure, necessary in accordance with the Contract conditions, has been fulfilled unless such certificate is incorrect by reason of the following:

1. Fraud or cheating or deliberate concealment of facts in relation to the Works or any part thereof or to any matter covered by such certificate, or
2. Any defect (including any omission) in the Works or in any part thereof, the uncovering of which could not have been possible by test or reasonable examination at any suitable time during the execution of the Works or prior to the issuance of such certificate, or
3. Any unintentional inclusion of any work or materials or goods or figures in any account statement or any arithmetical error in such statements.

## 64- Withdrawal of Works (entry of the Employer into the Works)

64-1 Withdrawing the work: The Employer may, after serving 14 days’ notice in writing to the Contractor enter into the Site, takeover the Works, confiscate the performance security and expel the Contractor therefrom in any of the following cases:

1. If the Contractor submits a request of declaration of its bankruptcy or insolvency.
2. If the Contractor goes bankrupt or announces its insolvency.
3. In case of issue of court order to have Contractor’s belongings subjected to bankruptcy or placed under trust.
4. If the Contractor is proven to have being involved in corruption and fraud indicated in GCC (73).
5. If the Contractor enters into agreement to settle or transfer its rights in favor of its creditors.
6. If the Contractor accepted to execute the Contract under the control of a supervision committee consisting of its creditors.
7. If the Contractor announces termination of its company except for merger or restructuring purposes.
8. In case of sequestration of the Contractor’s assets by a specialized court, which results in the Contractor’s inability to proceeding with its Contract obligations,
9. In case of Engineer’s written notice to Employer, contents of which includes:
10. The Contractor has abandoned the implementation of the Contract.
11. The Contractor has become unable to continue with the Works without any reasonable cause or has halted the progress of the Works for a term of thirty (30) days after having received written warning from the Engineer to continue with the Works.
12. The Contractor has failed to have materials removed from Site or Works dismantled and replaced properly, within thirty (30) days following receipt of a written notice from the Engineer, stating that it was decided that such materials or works have been rejected under the Contract.
13. The Contractor has failed to have the Works performed in accordance with the Contract or has, through negligence and willful misconduct failed to execute its obligations under the Contract.
14. The Contractor has failed to rectify any defects resulting from any work sublet to any Sub-contractor.
15. The Contractor has delayed completion of the Works for a period exceeding the permitted maximum limit for which lump sum compensation is to be paid under the delay damages clause).

The Employer's withdrawal of the Works, entry into the Site, taking over of the Works and the Contractor's expulsion therefrom under the aforesaid cases shall not be considered as termination of the Contract or the release of the Contractor from any of his obligations or liabilities under the Contract or considered as affecting the rights and powers of the Employer or the Engineer under the Contract. The Employer may itself complete the Works or may employ any other contractor to complete the Works and the Employer or such other contractor may use for such completion the Construction Equipment and Temporary Works and materials which have been deemed to be reserved exclusively for the construction and completion of the Works under the provisions of the Contract in the manner that the Employer and other contractors may consider proper. The Employer may at any time sell any of the said Construction Equipment and Temporary Works and surplus materials and apply the proceeds of such sale for or towards the fulfillment of any amounts due or which may become due to the Employer on account of the Contractor under the Contract.

64-2 Valuation at Date of Withdrawal of Works: The Engineer shall, as soon as may be practicable after entry into the Site and expulsion of the Contractor by the Employer and before starting to complete the Works, a conduct such assessments and enquiries pursuant to GCC (64-3), determine in agreement with the Contractor [or through GCC (69) – (Adjudicator) or GCC (71) (Arbitration) in case Contractor’s non-attendance or disagreement despite being notified] the amount that the Contractor reasonably is entitled to , at the time of such entry, in respect of Works actually performed by the Contractor and the value of any of the compliant unused or partially used materials on site and the Construction Equipment and Temporary Works. Such amount is to be taken into consideration in settlement of Contractor's account as detailed in GCC (64-3) below.

64-3 Settlement of Contract Account after Withdrawal of Works: If the Employer enters upon the Site and undertake the Works and expel the Contractor pursuant to this Clause, the Employer shall not be liable to pay to the Contractor any amount on account of the Contract until the expiration of the Maintenance Period and Engineer shall:

1. determine the amounts paid to the Contractor prior to withdrawal of Works, and
2. add the costs of completion of Works and maintenance thereof, delay damages (if any) and all other expenses incurred by the Employer including, overhead charges indicated in Contract Special Conditions, and
3. then deduct the sum of the amounts in (a) and (b) above from the amounts that the Engineer certifies as would have been due to the Contractor if the Works have been performed in accordance with the Contract, then

If the Contractor’s account was found creditor, then such due amount difference shall be paid to him. However, if the sum of the amounts paid to the Contractor and disbursed on his account exceed the sum which would have been payable to the Contractor on due completion, then the Contractor shall upon demand pay to the Employer the amount of such excess and it shall be deemed as a debt due on account of the Contractor to the Employer and shall be recoverable accordingly.

## 65- Termination of the Contract

65.1 In the case of occurrence of what is considered as (Force Majeure) pursuant to GCC (72) during execution of the Works (including outbreak of war whether declared or undeclared) in Kurdistan Region of Iraq or in case Kurdistan Regional Government is involved therein in a manner that may have significant financial or other impact over the performance of Works, then the Contractor, if does not terminate the Contract pursuant to this Sub-Clause or as stipulated by provisions of GCC (67-1-c), shall exert extensive efforts to complete the Works. In such case, the Employer may also terminate the Contract at any time after occurrence of the force majeure by serving a written notice to the Contractor, and the Contract shall be deemed to have been terminated starting from date of the notice by the Employer and the release of the performance security to the Contractor, provided that such arrangement shall not prejudice the rights of both parties concerning any breach of contract preceding such Contract termination. Contract termination as per this clause shall not have any effect on the legal rights of either party pursuant to GCC (71) hereof.

65.2 In case of impossibility of Contract performance for any reason where the Employer and the Contractor agree that such reason is outside the control of any of the parties and which led to the impossibility of performance then the Contract shall be deemed to have been terminated as of the date of the Contractor’s receipt of notification of the termination and return of its performance security by the Employer.

65.3 The Employer reserves the right to terminate the Contract for convenience in the public interest by serving a written notice to the Contractor. The Contract shall then be deemed to have been terminated as of date of Contractor’s receipt of the notification and the release/return of the performance security to the Contractor. The Employer shall not be permitted to use this right for the purpose of performing the Works by itself or by another contractor under the same circumstances which led to Contract termination under this sub-clause.

65.4 In case if Contract is terminated pursuant to the provisions of GCC (65-1) or (65-2) or (65-3), The Contractor shall as expeditiously as reasonable remove all Construction Equipment and Temporary Works from the Site, and provide its Sub-contractors facilitation to do the same.

## 66- Payment of Amounts upon Contract Termination

66-1 If the Contract has been terminated pursuant to the provisions of GCC (65), the Employer shall pay to the Contractor the amounts due to him in respect of the executed work prior to the date of termination in accordance to the rates and prices specified in the Contract in addition to the following:

1. The amount due for payment in respect of indirect costs which are priced separately from the items of the Permanent Works in the Priced Bill of Quantities, to the extent that the work or service related to these costs have been executed or completed, as certified by the Engineer.
2. Cost of materials and goods that have been ordered prior to the date of Contract termination in a proper manner and which are to be used for the Works and which are to be delivered to the Contractor or which the Contractor is obligated to receive under the law (such materials and goods shall become the property of the Employer after payment of their cost).
3. A reasonable amount that the Engineer determines to cover any expenses incurred by the Contractor in respect of its expectation to complete the Works, provided that such expenses do not fall under the scope of the amounts covered by Paragraphs (a) and (b) of this Sub-Clause.
4. Reasonable costs that would be required to remove the Construction Equipment pursuant to GCC (65-4) in addition to reasonable costs to re-export such Equipment to the country of Contractor’s registration or any other location (whichever is cheaper), if so required by the Contractor, provided that re-export is done immediately after removal from the Site.
5. Reasonable cost for repatriation of all Contractor’s staff, workmen employed for or in respect of the Works to their home countries at the time of termination.

Provided that any payments made by the Employer pursuant to this Clause takes into consideration the Employer’s right to deduct therefrom any outstanding amounts due to him from the Contractor in respect of payments for materials and any advance previously paid by the Employer to the Contractor relating to the Works. However, no payment shall be affected for any Works or materials that have been rejected in accordance with Contract Conditions.

## 67- Contract Termination by Contractor and related Payment

67-1 The Contractor reserves the right to terminate the Contract in the following cases:

1. Non-payment to the Contractor in respect of an interim payment, approved by the Engineer, after lapse of ninety (90) days from the date of Engineer’s certification. In this case, the Contractor must notify the Employer in writing of his intention to terminate the Contract after lapse of thirty (30) days as of the date of such notification> If such delayed payment, subject of the notice, is still not made then the Contractor shall have the right to terminate the contract.
2. If Works suspension by the Employer or the Engineer lasts for more than a continuous period of ninety (90) days for reasons unrelated to the Contractor’s performance and joint agreement between the Contractor and Employer cannot be concluded to resume execution of the Works within a reasonable future date.
3. In the case of Force majeure in accordance with GCC (72) hereof.

67-2 Payment in Case of Contractor’s Termination of the Contract Pursuant to GCC (67-1): Upon Contractor’s termination of the Contract pursuant to GCC (67-1) hereof, the Employer shall pay to the Contractor his due payments pursuant to GCC (66) except for the expenses specified in GCC (66-1-c).

## 68- Appointment and Replacement of Adjudicator

68-1 The Adjudicator shall be appointed through the Letter of Acceptance by joint agreement between the Employer and Contractor, and his name shall be fixed in the Contract Special Conditions. In the case of disagreement of the Employer and Contractor, the Adjudicator shall be appointed by the (Appointing Authority) named in the Contract Special Conditions within (14) days from its receipt of a request to this respect from either party.

68-2 In case of the Adjudicator’s death or resignation, or if the Employer and Contractor jointly agree that the Adjudicator is not performing its duties in accordance with the Contract, a new Adjudicator shall be appointed by joint agreement between the Employer and Contractor. In the case of disagreement between the Employer and Contractor, the (Appointing Authority) named in the Contract Special Conditions shall appoint the Adjudicator within (14) days from its receipt of a request to this respect from either party.

## 69- Disputes settlement through Adjudicator

69-1 If the Contractor perceives that the Engineer has made a decision, under any of this Contract terms, beyond the authority granted to him under the Contract or that the decision was inappropriate, then the Contractor has the right to refer the Engineer’s decision to the Adjudicator within (14) days from the date of notification of the Contractor of the Engineer’s decision, subject of dispute, whether that decision relates to the Contract or resulting therefrom or from execution of Works (notwithstanding if it occurred during progress or after completion of the Works or prior to or after Contract termination or withdrawal or other violation thereto). The Adjudicator shall issue his recommendation concerning the Engineer’s decision, object of the dispute, and shall notify the Employer, the Engineer and the Contractor in writing of his recommendation.

## 70- Procedures in Cases of Disputes

70-1 The Adjudicator shall issue his recommendation in writing within (30) days from receipt of the notice of the Contractor referring to him the Engineer’s decision, object of dispute, and the Adjudicator recommendation shall be binding on the Contract parties, unless any of the parties contests the recommendation in accordance with GCC (71-1).

70-2 Payment to the Adjudicator shall be per hour according to the rate specified in the BDS and Contract Special Conditions, in addition to payment of the reimbursable expenses (hotel accommodation, travel and other ancillaries) as specified in these conditions. The Adjudicator’s fees and costs shall be split equally between the Employer and the Contractor, regardless of the outcome/content of the Adjudicator’s recommendation.

## 71- Settlement of Disputes - Arbitration:

71-1 If the Employer or the Contractor contest the Adjudicator’s recommendation, then the Employer or the Contractor shall, within (30) days as of the next day of notice of the said recommendation, inform the other party and Engineer in writing through the letter “Notice of Dissatisfaction with Adjudicator’s Recommendation” stating the reasons behind that and confirming that party’s intention to refer the dispute to arbitration. When one of the parties issue the letter of “Notice of Dissatisfaction with Adjudicator’s Recommendation”, both parties shall be bound to amicably negotiate an acceptable resolution in respect to the dispute, object of the Adjudicator’s recommendation, and either party shall not be able to refer the dispute to arbitration until the lapse of (60) days from date of issuing the letter of “Notice of Dissatisfaction with Adjudicator’s Recommendation” whether attempts for amicable settlement were conducted within the said period or not. Arbitration shall be conducted in the place indicated in the Contract Special Conditions as follows:

1. Each of the Employer and the Contractor shall appoint an arbitrator and both arbitrators, appointed as aforesaid, shall agree on the third arbitrator to chair the panel. In the case of failure to reach an agreement within (14) days from the last appointment date, then the Employer or the Contractor shall reserve the right to refer the matter to the (Appointing Authority) named in the Contract Special Conditions to appoint the third arbitrator.
2. The arbitrators shall have full authority to review, edit and amend any decision or opinion or order or certificate or valuation that has been issued by the Adjudicator concerning the dispute. The decision issued by the arbitrators shall be binding on both parties unless any of the parties considers it is irregular or void in accordance with the Law for Civil Prosecution.
3. Referring to arbitration shall not commence until after completion of the Works or perception of completion notwithstanding agreement of both the Employer and the Contractor otherwise in writing. Due consideration must always be given that postponement of resolution of the dispute shall not result in harm to any of the parties or hinder the progress of Works.
4. In the case of local arbitration, all fees and other costs shall be paid to the arbitrators by the party requesting the arbitration provided that such fees and costs shall be payable by the party against whom the arbitration verdict is eventually pronounced. The local arbitration shall be conducted in Kurdistan Region of Iraq and the foreign arbitration shall be in the country and city indicated in the Contract Special Conditions. In the case of foreign arbitration, each party shall bear its respective cost of arbitration until the arbitrators issue their decision in respect of splitting the fees among the dispute parties. In all circumstances, the applicable law to arbitration shall be the prevailing laws of Kurdistan Region of Iraq.

## 72 – Force Majeure

72-1 With respect to this Clause, Force Majeure refers to any exceptional occurrence which is:

1. beyond the control of any of the Contract parties;
2. any of the parties could not have taken precaution against prior to contracting;
3. upon occurrence, any of the parties cannot avoid or control;
4. cannot be attributable to the other party.

Force Majeure comprises exceptional circumstances, like but not limited to:

1. Hostile acts like war whether declared or undeclared, invasion and other actions of chaos and disturbances that are not caused by the Contractor’s staff or his agents or Sub-contractors.
2. Any effects/results of ionic or nuclear radiations or conventional explosions or turbulences resulting from sonic or supersonic flying transport means.
3. Any effects/results of natural disasters which the Contractor cannot foresee or avoid through precautionary procedures or insure against.

72-2 Upon occurrence of any of the Force Majeure circumstances which prevents one of the Contract parties from the fulfillment of its obligations under the Contract, then that party shall notify the other party and the Engineer in writing of such occurrence, within (20) days of its knowledge of the occurrence or when it should have become aware of it, indicating the extent of its effect on the capabilities of the party to fulfill its obligations in accordance with the Contract. Upon that party’s notification in accordance with this Clause, it shall be relieved of its contractual obligations in respect of that occurrence as long as the Force Majeure has prohibited it from fulfillment of its obligations. The parties to the Contract shall be committed to exert all that is possible to ease the effects of the Force Majeure throughout its occurrence.

## 73- Corruption and Fraudulence Practices

73-1 The Employer requires that contractors, suppliers and consultants observe the highest standard of ethics during implementation duration of the Contract. In pursuit of this policy, the Employer shall:

1. Adopt the definitions included in paragraphs (16) to (20) in Article (1) of the Public Procurement Regulations number (2) of (2016).
2. Reserve the right to sanction a firm or individual, including declaring it ineligible to participate in public procurements in accordance to the debarment procedures, if it at any time determines that such firm or individual, directly or through an agent, engaged, in corrupt or fraudulent practices during the Contract performance.
3. Oblige contractors, suppliers and consultants to permit the Employer or his appointed auditors to inspect the accounts, records and other documents relating to the Bid submission and Contract performance.

73-2 If the Employer determines that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer reserves the right, after giving (14) days’ notice to the Contractor, to stop Contractor’s work and to withdraw the Contract Works, and the provisions of GCC (64-1) shall apply.

**Section VII. Special Conditions of Contract**

Special Conditions of Contracts

The Special Conditions of Contract compliments and/or amends the General Conditions of Contract. In case of contradiction the provisions listed in the Special Conditions of Contract shall prevail.

|  |  |
| --- | --- |
| **GCC 1.1 (a)** | The Employer is *[insert official and full name of the Employer]*. |
| **GCC 1.1 (e)** | The Engineer is *[insert name of the Engineer]*. |
| **GCC 1.3** | The language is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **GCC 1.4** |  *[insert suitable maximum duration]*. |
| **GCC 1.5** | The value of the performance security shall be \_\_\_\_\_\_\_\_\_\_\_\_ *[insert amount and currency]*.Or an exchangeable currency accepted by the Employer or the currency used in payment under Contract in the specified percentages of Contract prices.*[amount of the guarantee is expressed normally as percentage of the Contract Price, and is different relative to the risks that the Employer considers and the effect of non-performance of the Contract by the Contractor]* |
| **GCC 17-1** | Sub-contracting percentage of the Contract Price: [*insert the percentage that the Employer considers suitable]*  |
| **GCC 22-1-b** | The maximum irretrievable amount from the insurance company for each incident: *[indicate the amount that the Employer considers suitable]* |
| **GCC 24-2**  | The minimum amount of third party insurance: *[indicate the amount that the Employer considers suitable].*  |
| **GCC 33-1** | The Maintenance Period or Defects Notification Period is:*[insert the period suitable for the nature of Works – Normally 365 days]*  |
| **GCC 35-1 and 35-2** | Notices shall be sent to: **Address of the Contractor:**To: *[insert full name of person, if applicable]*Address of street**:** *[insert street address and number]*Floor/Room number**:** *[insert floor and room number, if applicable]*City: *[insert name of city or town]*Postal Code: *[insert postal code, if applicable]*Country: *[insert name of country]*Telephone: *[insert telephone number, including country and city codes]*Electronic mail address: *[insert email address]***Address of the Employer:**To: *[insert full name of person, if applicable]*Address**:** *[insert street address and number]*Floor/Room number**:** *[insert floor and room number, if applicable]*City: *[insert name of city or town]*Postal Code: *[insert postal code, if applicable]*Country: *[insert name of country]*Telephone: *[insert telephone number, including country and city codes]*Electronic mail address: *[insert email address]* |
| **GCC 38-1** | Works program: *[insert the period within which the Contractor shall submit the program to the Engineer]* |
| **GCC 38-3** | The updated Works program: *[insert the time periods within which the Contractor should present the updates to the Works program, appended with his forecast for the cash flow, to the Engineer]*.(The time period can be determined through provision of program updating when the deviation exceeds the Completion Duration of Works by 5% of project duration).In case of Contractor’s failure to present the updated Works program in due date, the Engineer may withhold from the next payment *[insert the amount to be withheld]* |
| **GCC 39-1** | Commencement date of Works: *[insert the number of days from date of Site possession or any other requirements like completion of advance payment procedures]* |
| **GCC 40-1** | The Site Possession Date: In case of Site delivery in stages: *[the Employer inserts location(s) and date(s) and the duration for completing each location]*  |
| **GCC 54-1** | Advance payment: Upon stipulation by bidding documents and Contract that an advance payment shall be affected: *[insert the percentage of the advance payment of the Contract Price]* after Contractor’s submission of a request in writing to this effect with an irrevocable and unconditional bank guarantee in the name of the Employer for the same amount.The Employer shall recover the amount of the advance payment in monthly installments to be deducted from the payments due to the Contractor (starting with 20%) according to *[insert percentages from each payment]*  |
| **GCC 56-1** | Delay Damages: The Contractor shall pay to the Employer *{insert the lump sum amount or the percentage of Contract Price for each [insert day or week]}* for the whole Works or for each portion thereof. |
| **GCC 60-1** | Price adjustment: *The Contract* *[insert option: allows or does not allow].*In the case that the Contract allows for price adjustment, the following formula shall be used:**Adjustment Value (P) = Po x [a+b (Ln/Lo) + c (Mn/Mo) + d (En/Eo] – Po**Note that: a + b + c + d =1Where:Adjustment Value = variance in the contractor’s interim payment.Po = value of interim payment in accordance with contract.Payment after adjustment = (Adjustment Value + Po).**a** = constant representing margin of profit and overheads in accordance with the contract, also the materials that are not subject to adjustment {not included by the constant (**c**)}.**b** = constant representing the percentage of the constituent of personnel wages to the total contract value.**c** = constant representing percentage of the constituent of selected materials of high value and variable market prices (like steel reinforcement, cement, asphalt...etc.) to the total contract value.**d** = constant representing the percentage of the constituent of power to the total contract value.**Ln, Lo** = index for the personnel wages in the relevant construction sector in the Region or the country of origin (if adjustment is intended for foreign currency) at each of the base date and adjustment date respectively.**Mn, Mo** = index for the raw materials in the Region or the country of origin (if adjustment is intended for foreign currency) at each of the base date and adjustment date respectively.**En, Eo** = index (indicator) for the machinery and power in the Region or the country of origin (if adjustment is intended for foreign currency) at each of the base date and adjustment date respectively.**The Employer shall specify the constants a, b, c and d as follows**:1. (insert constant **a**)
2. (insert constant **b**)
3. (insert constant **c**)
4. (insert constant **d**)

The Contractor shall determine in his bid the sources that shall be used in determining the wages of labor and prices of the materials and energy/equipment when signing the Contract.Base date: the date that precedes the deadline for bids submission by (14) days.Price adjustment date: The formula shall be used upon fulfillment of the following two conditions:1. monthly after the twelfth month of commencement date, and
2. if the variation in the monthly due payment P - Po exceeds (5%) of the value of Po
 |
| **GCC 61-1-j** | If applicable, the interest value to be used is *[insert percentage %]* providing it does not exceed the percentage specified by the Central Bank |
| **GCC 61-2** | Advance payment for materials, equipment and machinery that enter into the core of the Permanent Works:Advance payment shall be affected in accordance with GCC (61-2), on the following basis:* + 1. **Imported machinery and equipment from abroad:**

The advance payment for this type of materials, equipment and machinery shall be based on the percentage *[insert \_\_\_\_\_\_\_%]* of the value thereof including customs fees and other expenses (if any) upon arrival to the Site or *[insert \_\_\_\_\_\_%]* of the price thereof whichever is less with due consideration the aforesaid. The advance payment shall be affected to the Contractor if he is an Iraqi in accordance with the installments that the Region’s Central Bank charges to pay to the suppliers of those materials, equipment and machinery.The advance payment shall not be affected unless after consideration of the following:1. That the quantity of such materials and the equipment and machinery are necessary for the execution of the Permanent Works as approved by the Engineer.
2. That the quality and description of such materials, equipment and machinery is compliant with the specifications as approved by the Engineer.
3. That the value of such materials, equipment and machinery is in accordance with the suppliers’ invoices providing that the value does not exceed their prices in the Contract.
	* 1. **Imported machinery and equipment by other Kurdistan Regional Government entities:**

Upon Engineer’s certification, the Contractor shall be provided advances in amounts and percentages that the Kurdistan Regional Government entities request against importation on behalf of the Contractor providing that such payments shall not, in all aspects, exceed *[insert \_\_\_\_\_\_\_%]* of the value of such materials, equipment and machinery in accordance with their suppliers’ invoices attested by the importing entity or *[insert \_\_\_\_\_\_%]* of their prices in the Contract whichever is less. * + 1. **Materials, equipment and machinery delivered at Site:**

Advance payment for materials, equipment and machinery delivered at Site, that were not covered by (a) and (b) above, shall be affected with a percentage *[insert \_\_\_\_\_%)* of their value at time of advance or *[insert \_\_\_\_\_\_%)* of their prices in the Contract whichever is less with due consideration to the conditions indicated in (a-1, 2, 3) above. |
| **GCC 61-3** | Payment in foreign currencies:Payment in foreign currencies shall be in accordance with GCC (61-3) and the following conditions with due consideration that remittances to the Contractor in foreign currencies, including remittances to his foreign labors 9inclusive of wages and salaries), shall not exceed the agreed percentage specified in the Contract for foreign currencies:*[indicate the conditions that should be fulfilled]* |
| **GCC 64-3** | The overhead percentage when the Employer or through its representation performs the Contractor’s obligation under Contract shall be *[insert \_\_\_\_\_%] of the actual cost for execution such obligations without prejudice to the Contractor’s responsibilities under Contract.*  |
| **GCC 68-1&2** | Adjudicator name: *[insert name of Adjudicator]*Appointing Authority for the Adjudicator: *[insert name of Authority]*. |
| **GCC 70-2** | The Adjudicator shall be paid: *[insert hourly fees \_\_\_\_\_\_ and* *reimbursable expenses according to the following description \_\_\_\_\_\_\_\_\_\_\_]*. |
| **GCC 71-1** | *[use this provision in the case of dispute settlement through arbitration]* The rules that govern procedures of arbitration referred to in (71-1) shall be as follows:1. **Contracts with foreign contractors**

[For contracts with foreign contractors, arbitration shall be the International Trade Arbitration for its practical benefits that overrule other arbitration rules. Of the rules that are followed in arbitration that Employer may prefer to use are the prevailing rules issued by the United Nations Commission on International Trade Law UNCITRAL Arbitration Rules, ICC].If the Employer choses the rules of UNCITRAL, the model that should be specified in the Contract, should be as follows:1. Any indifference, dispute or claim resulting from or relating to the Contract should be resolved through arbitration in accordance with the prevailing rules of UNCITRAL. The location of arbitration is *[insert name of city or country \_\_\_\_\_\_\_\_\_].*

Name of Appointing Authority: *[insert name of authority]*If the Employer choses the rules of ICC, the model that should be specified in the Contract, should be as follows:1. All disputes resulting from the current Contract shall be resolved permanently in accordance with dispute resolution and arbitration of the International Chamber of Commerce of one arbitrator or more to be appointed in accordance with those rules.

The location of arbitration is *[insert name of city or country \_\_\_\_\_]* Name of Appointing Authority: *[insert name of authority]*1. **Contracts with local contractor in the Region**

In the case of dispute arising between the Employer and the local contractor in the Region, arbitration shall be followed in accordance with the prevailing laws in the Region.  |

Section VIII - Contract Forms

**Table of Forms**

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[3- Advance Payment Security (Bank Guarantee) 132](#_Toc453565571)

**Letter of Acceptance** (To be written on Employer’s letter head)

[The letter of acceptance shall be deemed as a binding contract in accordance with ITB (39-5) and effective pursuant to GCC (4-2) of the Contract General Conditions. The form shall be filled in and sent to the successful bidder after lapse of the stand-still period without receipt of any objections by other bidders and ascertaining approval of the concerned authorized public authority].

*[Insert date]*

Number and Title of Contract: *[insert number and title of Contract]*

To: *[insert name and address of Contractor]*

This letter is sent to notify you that your bid dated *[insert date]* for the execution of *[insert name and number of Contract as stated in the Contract Special Conditions]* for a value *[insert amount in figures and words and bid currencies]* as corrected and amended[[11]](#footnote-11)11 in accordance with Instructions to Bidders (ITB), is accepted from our side.

*[Insert one of the following options (1) or (2)]*

1. We accept appointment of [insert name of Adjudicator as proposed by the bidder] to undertake the adjudication tasks in accordance with the Contract[[12]](#footnote-12)12.
2. We do not accept appointment of *[insert name of Adjudicator as proposed by the bidder] for adjudication tasks. By sending a copy of this letter to [insert name of appointment authority]*, we demand from [insert name], appointment authority, to appoint the Adjudicator pursuant to ITB (42-2).

Accordingly, you have to;

1. sign and return the appended Contract documents, and
2. submit the performance security in accordance with ITB (41-1) and the appended sample within \_\_\_\_\_\_ days from receipt of this acceptance letter pursuant to GCC (5) of the Contract General Conditions.

Signature of authorized person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and position of the signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Employer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Appendix: Contract form

Appendix: Sample of performance security

1. Contract Agreement Form

*[The successful bidder should fill in this form in accordance with the below instructions]*

This Agreement is made the on the *[insert number]* day of *[insert month],* *[insert year]* between

1. *[insert name of the* Employer*]*, *[insert description of the legal authority, like Agency of \_\_\_\_, Ministry of \_\_\_\_\_ the Kurdistan Regional Government]* or a company established in accordance with laws prevailing in Kurdistan Region of Iraq with headquarter *[insert address of Employer]* (hereinafter referred to as “the Employer”), and
2. *[insert name of Contractor]*, company or establishment in accordance with the laws of *[insert country of registration]* with headquarter *[insert address of the Contractor]* (hereinafter referred to as “Contractor”).

Whereas the Employer has released the tender for the execution of Works *[insert brief description of the Works]*, and has accepted the bid submitted by the Contractor for the execution and completion of these Works against *[insert Contract Price in figures and letters]*, (hereinafter referred to as “Contract Price”).

This Agreement stipulates the following:

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

2. The following documents shall be deemed to form and be read and construed as part of the Contract between the Employer and Contractor.

1. the Contract Form
2. the Letter of Acceptance
3. The submitted Bid Letter
4. the Special Conditions of Contract
5. the General Conditions of Contract
6. the Specification
7. the Drawings
8. the Priced Bill of Quantities within the Contract Documents
9. any other document or annexes listed in the General Condition of Contract as forming part of the Contract documents,
10. This Contract form shall rule over any other Contract documents. In the case of contradiction or discrepancy between Contract documents, the documents shall rule in the list of preference above.
11. In consideration of the payments to be made by the Employer to the Contractor as specified in this Contract, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
12. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

The two parties whereof hereto have caused this Agreement covenant to execute in accordance with the prevailing laws of Kurdistan Region of Iraq on the day, month and year specified above.

for and on behalf of the Employer

Signature: *[insert signature]*

Title: *[indicate title or any other suitable title]*

for and on behalf of the Contractor

Signature: *[insert signature]*

Title: *[indicate title or any other suitable title]*

1. Performance Security (Bank Guarantee)

(To be verified with the form used by the Region banks)

*[Upon request of the successful bidder, the bank shall fill in this form in accordance with the instructions contained in brackets]*

Date: *[Insert date (day, month and year) of bid submission]*

Title and reference number of the national competitive bid: *[insert title and number of bid]*

*[Insert name and address of issuing bank or office]*

Beneficiary**:** *[insert full formal name and address of* Employer*]*

**Performance Security No.:** *[Insert guarantee reference number]*

We have been informed that *[insert name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[Insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert a brief description of Works]* (hereinafter called "the Contract").

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

At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of Iraqi Dinars *[insert amount in figures] [insert amount in words]*,[[13]](#footnote-13)13 upon immediate receipt by us of the Beneficiary’s first complying demand in writing supported by the Beneficiary’s statement, stating that the Contractor is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, after *[insert number]* day of *[insert month] [insert year]*, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 458, except that the supporting statement under Sub-Article (2) of Sub-Article 20 (a) is hereby excluded.
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
*[Signature(s) of the representative(s) authorized by the Contractor and bank].*

1. Advance Payment Security (Bank Guarantee)

*[Upon request of the successful bidder, the bank shall fill in this form in accordance with the instructions contained in brackets]*

Date: *[Insert date (day, month and year) of bid submission]*

Title and reference number of the national competitive bid: *[insert title and number of bid]*

SWIFT: *[insert bank’s SWIFT Identifier Code]*

Beneficiary**:** *[insert full formal name and address of* Employer*]*

Date: *[insert date]*

**Advance Payment Security No.:** *[Insert guarantee reference number]*

We have been informed *[insert formal name and address of bank]* that *[insert name and address of Contractor]* (hereinafter called "the Contractor") has entered into Tender No. *[Insert reference number of the tender] and have been awarded the Contract dated [insert Contract date]*, for the execution of *[insert a brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment guarantee is required.

At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of Iraqi Dinars *[insert amount in figures] [insert amount in words]*,[[14]](#footnote-14)14 upon immediate receipt by us of the Beneficiary’s first complying demand in writing supported by the Beneficiary’s statement, stating that the Contractor is in breach of its obligation(s) under the Contract, because the Contractor has used the advance payment for purposes other than execution of the Works.

The claimed payment under this security shall be conditional that the Contractor has already received the advance payment and deposited in his account number *[insert number]* at *[insert name and address of the bank]*

This validity of this security shall continue from the date of Contractor’s receipt of the advance payment under Contract until *[insert date].*

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. (458).
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
*[insert signature(s) of the representative(s) authorized by the bank].*

Attachment: Invitation for Bids

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[insert name of Contracting Authority]*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [insert name of tender]*

Tender no: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. The *[insert name of Contracting Authority]* now invites sealed bids from eligible bidders for the execution of *[insert brief description of Works required for execution]*.
2. This public tender will be conducted in accordance with Public Procurement Regulation No. (……) of year (….) and shall be open for all eligible bidders. The required qualifications of the successful bidder are *[insert required classification grade with brief description of the specified qualifications in Section III – Bidding Documents].*
3. Interested eligible bidders may obtain further information from *[insert name of the Contracting Authority]* and inspect the bidding documents during office hours *from \_\_\_\_\_\_ [insert start of office hour]* to the hour*\_\_\_\_\_\_\_ [insert end of office hour]* of the working days Sunday to Thursday*.*
4. A complete set of bidding documents in *[insert name of language]* may be purchased from the address below and upon payment of a nonrefundable fee of \_\_\_\_\_\_\_\_\_ [*insert amount and currenc*y*]*.
5. Bids must be delivered to the address below before \_\_\_\_\_\_\_\_\_ *[insert date and time].* Electronic bidding \_\_\_\_\_\_\_\_ *[insert one of two options: “accepted” or “not accepted”]*. The bids should be valid for a period of \_\_\_\_\_\_\_ *[insert number of days as prescribed in the BDS]* days after the deadline of bids submission*.* Each bidder shall be committed to its bid *[insert one of two options: “bid security of the value of \_\_\_\_\_\_ [insert amount and currency]* and shall be valid for a period of *[insert number of days]* after expiration of the bid validity.Late bids delivered after the specified date and time will be rejected. Bids will be publicly opened in the presence of the bidders who choose to attend at the address below on \_\_\_\_\_\_\_\_\_ *[insert time and date]*.
6. The Contracting Authority shall not be committed to accept the lowest-price bid.

*[insert name of Contracting Authority]*

[*insert postal address]* and/or *[electronic address*]

Tel: [*include the country and city code*]

E-mail: *[insert electronic address]*

1. Nonperformance, as decided by the Employer, shall include all contracts where (a) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted. [↑](#footnote-ref-1)
2. This requirement also applies to contracts executed by the Bidder as JV member. [↑](#footnote-ref-2)
3. The Bidder shall provide accurate information on the letter of Bid about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of court/arbitral awards against the Bidder or any member of a joint venture may result in disqualifying the Bidder. [↑](#footnote-ref-3)
4. The similarity shall be based on the physical size, complexity, methods/technology and/or other characteristics described in Section VII, Work’s Requirements. Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted. [↑](#footnote-ref-4)
5. Substantial completion shall be based on 80% or more works completed under the contract. [↑](#footnote-ref-5)
6. For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder’s share, by value, shall be considered to meet this requirement. [↑](#footnote-ref-6)
7. In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated. [↑](#footnote-ref-7)
8. Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period. The rate of production shall be the annual production rate for the key construction activity (or activities).

{The averages shall be (80%) of the estimated average production of the key activity(ies) in the contract as deem necessary to meet the estimated implementation program with due consideration to the reverse climatic conditions. [↑](#footnote-ref-8)
9. The minimum experience requirement for multiple contracts will be the sum of the minimum requirements for respective individual contracts. [↑](#footnote-ref-9)
10. If the most recent set of financial statements is for a period earlier than 12 months from the date of bid, the reason for this should be justified. [↑](#footnote-ref-10)
11. 11 Delete “Corrected’ or “amended” if not applicable [↑](#footnote-ref-11)
12. 12 For use only in case of Contractor/bidder’s objection in his bid over the Employer’s proposed Adjudicator as in ITB, thus propose another candidate. [↑](#footnote-ref-12)
13. 13 The bank shall insert the amount indicated in the Contract Special Conditions by the unit specified in the Special Conditions of Contract [↑](#footnote-ref-13)
14. 14 The guarantor shall insert the amount representing the advance payment. [↑](#footnote-ref-14)