

## Bid and Contract Documents for The Procurement of Complex Works

<b>Key for Document Completion</b>		
Version July 2003		
<i>These symbols</i>	=	<i>This Action</i>
[ ]		Information to be filled in by Procuring Organisation

## Table of Contents

	Page
SECTION 1 -- INSTRUCTIONS TO BIDDERS.....	6
1. Introduction .....	6
2. Contracting Authority .....	6
3. Subject.....	6
4. Submission of Bids .....	6
5. Applicable Conditions .....	7
6. Content of Bids .....	7
7. Eligibility.....	7
8. Qualification Criteria.....	8
9. Conflict of Interest.....	9
10. Bid Form [Bid form has now been included].....	9
11. Language .....	9
12. Site Visit .....	9
13. Clarification.....	9
14. Amendments of Bid Documents .....	9
15. Technical Specifications.....	10
16. Alternative Solutions .....	10
17. Price .....	10
18. Payments .....	11
19. Bid Security .....	11
20. Contacting the Procuring Organisation .....	11
21. Evaluation Currency .....	11
22. Sealing and Marking of Envelopes.....	11
23. Signing of Bids .....	12
24. Joint Bids.....	12
25. Computation of Time Limits .....	13
26. Withdrawal and Amendments .....	13
27. Opening Session.....	13
28. Explanations and Correction of Arithmetical Errors and Minor Informalities .....	13
29. Bid Acceptance/Variations .....	14
30. Preliminary Examination.....	14
31. Evaluation of Bids.....	14
32. Advance Payment .....	16
33. Award of Contracts.....	16
SECTION 2 -- BID DATA SHEET .....	17
SECTION 3 -- DRAFT CONTRACT FORM .....	19
SECTION 4 -- CONTRACT DATA .....	21
SECTION 5 -- GENERAL CONDITIONS.....	23
Article 1: Definitions .....	23
Article 2: Language and Law.....	24
Article 3: Sub-contracting .....	24
Article 4: Personnel .....	25
Article 5: Procuring Organisation's Risks .....	25
Article 6: Contractor's Risk.....	25
Article 7: Insurance .....	25
Article 8: Inspection and Testing.....	26
Article 9: Contractor to Construct the Work.....	26
Article 10: Completion Date .....	26
Article 11: Conflict of Interest .....	26
Article 12: Performance Security.....	27
Article 13: Safety .....	27

Article 14: Programme .....	27
Article 15: Extension of the Completion Date.....	27
Article 16: Delays Ordered by the Project Manager.....	27
Article 17: Early Warning.....	27
Article 18: Correction of Defects .....	27
Article 19: Uncorrected Defects .....	28
Article 20: Bill of Quantities .....	28
Article 21: Changes in the Quantities.....	28
Article 22: Payment Certificates .....	28
Article 23: Payments .....	29
Article 24: Currency of Payment .....	29
Article 25: Compensation Events.....	29
Article 26: General Obligations of the Contractor .....	29
Article 27: Price Adjustment.....	29
Article 28: Assignments.....	30
Article 29: Liquidated Damages .....	30
Article 30: Advance Payment.....	30
Article 31: Retention Moneys .....	30
Article 32: Dayworks .....	31
Article 33: Cost of Repairs .....	31
Article 34: Completion and Taking Over .....	31
Article 35: Final Account .....	31
Article 36: Tax .....	32
Article 37: Force Majeure.....	32
Article 38: Modifications .....	32
Article 39: Termination .....	32
Article 40: Payment Upon Termination .....	33
Article 41: Property.....	33
Article 42: Release from Performance .....	33
Article 43: Resolution of Disputes/Arbitration.....	33
Article 44: Notices .....	34
SECTION 6 -- Special Conditions of Contract .....	34
Price Adjustment (General Condition 27).....	34
Insurance (General Condition 7).....	34
Attachment I to the Special Conditions .....	35
SECTION 7 -- SPECIFICATIONS.....	36
DRAWINGS .....	37
SECTION 8 -- BILL OF QUANTITIES OR ACTIVITY SCHEDULE .....	38
SECTION 9 -- BID FORM .....	39
SECTION 10 -- FORMS.....	43
FORM OF BID SECURITY .....	43
FORM OF PERFORMANCE SECURITY .....	44
FORM OF SECURITY FOR ADVANCE PAYMENT .....	45
NOTIFICATION OF AWARD .....	47

## INVITATION TO BID (TENDER)

Date: \_\_\_\_\_ [insert date of Invitation to Bid] Reference No.: \_\_\_\_\_ [insert reference number]

Project Name: \_\_\_\_\_ [insert project name]

Dear Sir/Madam:

You are hereby invited to be a Bidder in the Tender described in the following documents. The Gambia Public Procurement Act defines a Tender as a type of Bid and anyone submitting a Tender or other Bid is known as a Bidder. Under the Tender process, there will be a public opening of all bids received as stated in 9 below.

1. The \_\_\_\_\_ [insert name of the Procuring Organisation] has applied for/received [use appropriate term] funds from \_\_\_\_\_ [insert source of funds] in \_\_\_\_\_ [state currency/ies] towards the cost of \_\_\_\_\_ [insert name of Project]. It is intended that part of these funds will be applied to eligible payments under the contract for \_\_\_\_\_ [insert title of contract].
2. The \_\_\_\_\_ [insert name of the Procuring Organisation] now invites sealed Bids from eligible Bidders for the construction of \_\_\_\_\_ [insert brief details of the works].
3. The works to be effected shall be performed at \_\_\_\_\_ [indicate the location for the performance of the works] and the required time for the performance of the works is \_\_\_\_\_ [indicate required time].
4. The deadline for submission of inquiries and for requests for clarifications is \_\_\_\_\_ [indicate deadline].  
[To be inserted only when a pre-bid conference is foreseen] A pre-bid conference will take place at \_\_\_\_\_ [indicate location] on \_\_\_\_\_ [indicate date].
5. Interested eligible Bidders may obtain further information from and inspect the Bid documents at the office of \_\_\_\_\_ [insert name, address, telephone and fax numbers of the Procuring Organisation].
6. A complete set of Bid documents in English language may be purchased by interested Bidders on the submission of a written application to the above and upon payment of a non-refundable fee of \_\_\_\_\_ [insert amount].
7. The provisions in the Instructions to Bidders and the General Conditions of Contract are the provisions of the Bid and Contract Documents for the Procurement of Complex Works of the Government of The Gambia.
8. Bids must be delivered to the address indicated under Section 5 above on or before \_\_\_\_\_ [insert time] Banjul time on \_\_\_\_\_ [insert date] and must be accompanied by a security of \_\_\_\_\_ [insert amount or percentage of bid amount].
9. Bids will be opened in the presence of Bidders' representatives who choose to attend at \_\_\_\_\_ [insert time and date] at the offices of the Procuring Organisation, at the address indicated under Section 5 above.



## SECTION 1 -- INSTRUCTIONS TO BIDDERS

### 1. Introduction

- 1.1 By submitting its Bid, the Bidder accepts in full all the terms and conditions of these Bid Documents as the sole basis of this Bid procedure, waiving its own conditions of sale. Any clause to the contrary shall be disregarded or entail the rejection of the Bid.
- 1.2 Bidders are expected to carefully examine and respect all instructions, forms, terms and specifications contained in these Bid Documents. In the event of any inconsistency between or within any parts of the Bid and Contract Documents, Bidders should seek clarification from the Procuring Organisation. The decision of the Procuring Organisation on any inconsistency shall be final and absolute.
- 1.3 Failure to furnish on time all the required information and documentation or the submission of Bids not substantially responsive in every respect to the Bid Documents is at the risk of Bidders and may result in the rejection of the Bid.

### 2. Contracting Authority

The Procuring Organisation is acting for a Project financed with funds originating from the source described in the Item "Source of Funds" of the Bid Data Sheet.

### 3. Subject

- 3.1 The detailed supply requirements for the works are stipulated in Item "Subject" of the Bid Data Sheet.
- 3.2 The works Bid must fully conform to the detailed description set out in the Technical Specifications.
- 3.3 Bids must be accompanied with descriptive literature, instructions, manuals, catalogues, brochures or pamphlets for all items offered. These shall be in English. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in English, in which case, for purposes of interpretation of the Bid, the translation shall govern.

### 4. Submission of Bids

Bids will only be accepted if they comply with the following conditions:

- 4.1 Bidders may send their Bids by registered mail, or delivered by hand, or by any other method with proof of receipt, (including delivery by fax) [*the statement in round brackets is optional*], to arrive at the latest by the date and time stipulated at Item "Deadline" of the Bid Data Sheet. The Procuring Organisation shall not be held liable for proof of arrival in case any other method of transmission is used.
- 4.2 Bids received at a later date or time than specified shall be rejected and returned to the Bidder unopened.
- 4.3 The Procuring Organisation may, at its absolute discretion and before the expiry of the deadline for Bid submission, extend the deadline for the submission of Bids. Any such extension shall be made public or notified to the Bidders who purchased the documents in the same way as the Invitation to Bid
- 4.4 The bidder shall prepare one original of the documents comprising the Bid as described herein, bound with the section containing the Bid Form and attachments (Sections 9 and 10) and clearly marked "original." In addition, the bidder shall submit copies of the bid, in the number specified in the Bid Data Sheet and clearly marked "copies." In the event of discrepancy between them, the original shall prevail.

- 4.5 The original and all copies of the bid shall be typed or written in indelible ink (in the case of copies, photocopies are also acceptable) and shall be signed by a person or persons duly authorized to sign on behalf of the bidder. The person or persons signing the bid shall initial all pages of the bid where entries or amendments have been made.
- 4.6 The bid shall contain no alterations, omissions, or additions, unless the person or persons signing the bid initial such corrections.
- 4.7 The bidder shall furnish the certifications required in paragraph 7 below.

## **5. Applicable Conditions**

- 5.1 Except in cases of lots or alternative solutions, only one Bid may be submitted by each Bidder. No Bidder may participate in the Bid of another for the same contract in any capacity whatsoever.
- 5.2 Participation by a Bidder in more than one Bid, whether in its own right or in association or joint venture with (an) other Bidder(s), shall result in the exclusion from the Bid of all Bids in which the Bidder is involved.
- 5.3 Bidders shall remain bound by their Bids for the period specified in Item "Bid Validity Period" of the Bid Data Sheet. Any Bid valid for a shorter period shall be rejected. [Schedule 1-A (p) of GPPR]
- 5.4 In exceptional circumstances, prior to the expiry of the original Bid validity period, the Procuring Organisation may request the Bidders for a specific extension in the period of validity. Bidders agreeing to the request will not be permitted to modify their Bids. A Bidder may refuse the request without forfeiture of its Bid security.
- 5.5 The Procuring Organisation is not bound either to accept the lowest or any Bid or to award any contract, and reserves the right to annul the Bidding process at any time without assigning any reason and without incurring any liability to the affected Bidders. [Schedule 1-A (x) of GPPR]
- 5.6 The successful Bidder shall remain bound by its Bid for a further period of 30 days following the receipt of the communication notifying him of contract award. [Schedule 1-A (p) of GPPR]

## **6. Content of Bids**

The Bid prepared and submitted by the Bidder shall, in accordance with the requirements stated in these Instructions to Bidders, comprise:

- 6.1 A Bid security.
- 6.2 Signature by the Bidder or its duly authorised agent. A Power of Attorney must be submitted by the Bidder, evidencing that the signature is duly authorised.
- 6.3 A list of all the documents submitted as part of the Bid, duly signed by the Bidder.

## **7. Eligibility**

- 7.1 Participation in the invitation to Bid and the award of contracts shall be open on equal terms to all nationals and legal entities, constituted under and governed by civil, commercial or public law, formed in accordance with the law of their country of origin, regardless of their nationality.
- 7.2 Bidders shall not be eligible for the award of contracts and the Procuring Organisation may exclude them from (further) participation in the invitation to Bid, without compensation, as of right and without recourse to prior legal proceedings where they do not meet the Bid qualification criteria. Bidders therefore must submit the following certification as documentary evidence of qualifications and the Bid security with their Bids:

7.2.1 I (WE) certify that I (we):

- Possess the legal capacity to enter into the contract;
- Possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capacity, experience in the procurement object, reputation and the personnel, to perform the contract;
- Am (are) not insolvent, in receivership, bankrupt or being wound up, my(our) business activities have not been suspended, and I(we) are not subject of a legal proceeding for any of the foregoing;
- Have (has) fulfilled my(our) obligations to pay taxes and social security contributions;
- Am (are) not subject to suspension of payments in accordance with the judgement of a court or a judgement declaring bankruptcy and resulting, in accordance with my(our) national laws, in the total or partial loss of the right to administer and dispose of my(our) property nor is any such legal proceeding pending;
- Am (are) not guilty of misrepresentation with regard to information required for participation in a public procurement;
- Am (are) not in breach of a public procurement contract;
- Have performed previously the number and value of similar contracts as required in the qualification requirements of this procurement.

[The Procuring Organisation may include additional qualifications to be certified by the Bidder]

7.2.2 The Bid Security called for in Clause 19 herein.

- 7.3 Failure to provide the certification required in sub-Clause 7.2.1 above shall result in the Bidder's Bid being rejected as non-responsive.
- 7.4 For the purposes of Clause 7.3 above, the Procuring Organisation reserves the right to request from the Bidder any document evidencing any of the statements made sub Clause 7.2.1.
- 7.4 Bidders who, knowingly and intentionally supply false information in order to appear responsive to Bid documents shall be rejected and subject to debarment by the Procuring Organisation.
- 7.5 Bidders who, knowingly and intentionally confer or offer to confer any gift, gratuity, favour, or advantage, present or future, upon any employee or representative of the Procuring Organisation shall be rejected and subject to debarment by the Procuring Organisation.

## 8. Qualification Criteria

- 8.1 All Bidders shall provide in the forms of Bid and Qualification, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 8.2 To qualify for award of Contract, Bidders shall meet the following minimum qualifying criteria:
- a) Annual volume of construction work during the last two years of at least the amount specified in the Bid Data Sheet;
  - b) Experience as prime contractor in the construction of at least the number of works specified in the Bid Data Sheet of a nature and complexity equivalent to the Works over the period also specified in the Bid Data Sheet (to comply with this requirement, works cited should be at least 70 percent complete).
  - c) Proposals for the timely acquisition (or own, lease, hire, etc.) of the essential equipment listed in the Bid Data Sheet; and
  - d) A Technical Director with at least the experience in works of an equivalent nature and volume specified in the Bid Data Sheet.
- 8.3 All Bidders shall certify that all information provided by them in their prequalification applications remains valid or, where this has changed, shall provide details of the changes.



## **9. Conflict of Interest**

- 9.1 The prospective Bidder certifies, to the best of its knowledge and belief, that it is not aware of any information bearing on the existence of any potential organisational conflict of interest. If the prospective Bidder cannot so certify, it shall provide a disclosure statement in its proposal that describes all relevant information concerning any past, present or planned interests bearing on whether it may have a potential organisational conflict of interest.
- 9.2 For purposes of this clause, "organisational conflict of interest" occurs when Bidders are associated, or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by the Procuring Organisation to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the works to be purchased.
- 9.3 Government-owned enterprises in The Gambia may participate only if they are legally and financially autonomous, if they operate under commercial law, and if they are not dependent agency of the Procuring Organisation.
- 9.4 Bidders must provide full, accurate and complete information as required by Clause 9.1. The penalty for making false statements in Bids is prescribed in the exclusion from further participation in the invitation to Bid, without compensation, as of right and without recourse to prior legal proceedings.

## **10. Bid Form**

The Bidder shall complete the Bid Form and the appropriate Price Schedule furnished in the Bid documents.

## **11. Language**

The Bid shall be drawn up in English.

## **12. Site Visit**

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

## **13. Clarification**

- 13.1 A prospective Bidder requiring any clarification of the Bid documents may notify the Procuring Organisation in writing, including by fax, at the address specified at Item "Address of Procuring Organisation" of the Bid Data Sheet. The Procuring Organisation will respond in writing to any such request for clarification that it receives no later than \_\_\_\_\_ [enter number of days] prior to the deadline for submission of Bids stipulated in Item "Deadline" of the Bid Data Sheet. Written copies of the Procuring Organisation's response (including an explanation of the query but without identifying the source of the enquiry) will be sent to all prospective Bidders who have received the Bid documents.
- 13.2 If a clarification meeting is to be held it will take place at the address, on the date and at the time detailed in Item "Clarification Meeting" of the Bid Data Sheet. All costs of Bidders attending the clarification meeting are the responsibility of the Bidders. Failure to attend the clarification meeting shall not be a basis for rejection of Bids.

## **14. Amendments of Bid Documents**

- 14.1 At any time prior to the deadline for submission of Bids, the Procuring Organisation, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, may modify the Bid documents by amendment.

- 14.2 All the prospective bidders that have received the Bid documents will be notified of the amendment in writing or by cable, and will be Biding on them.
- 14.3 In order to allow prospective bidders reasonable time in which to take the amendment into account in preparing their Bids, the Procuring Organisation, at its discretion, may extend the deadline for the submission of Bids.

## **15 Technical Specifications**

The works must in all respects satisfy the requirements laid down in the Technical Specifications of the Bid Documents.

## **16. Alternative Solutions**

- 16.1 Unless otherwise provided for in Item "Alternative Solutions" of the Bid Data Sheet Bidders may submit a Bid based on a alternative solution on the condition that they also submit a Bid that is wholly responsive to the original Bid requirements. Any works may be proposed which are functionally equivalent, similar or better and adapted to local conditions of use in the place(s) of destination. Item "Alternative Solutions" of the Bid Data Sheet specifies the limitations, design criteria and other requirements applicable to alternative solutions.
- 16.2 Alternative solutions may not derogate from the requirements of these Instructions to Bidders. A alternative solution Bid shall only be evaluated if it is submitted by the Bidder submitting the lowest evaluated Bid.
- 16.3 Item "Alternative Solutions" of the Bid Data Sheet states whether the Bidder submitting a alternative solution is to be responsible for the design, if any, of a alternative solution and, if this is the case, specifies procedures, in particular for checking, revision and approval.
- 16.4 The submission of any alternative solution shall comprise:
  - 16.4.1 an individual Bid for the alternative solution.
  - 16.4.2 a demonstration of the benefit of the alternative solution over the conforming solution, including quantifiable justifications of any financial advantage.
  - 16.4.3 a draft of the amendments to the technical provisions of the Instructions to Bidders necessitated by the alternative solution.
  - 16.4.4 those drawings and specifications provided for in the conforming solution that are not affected by the alternative solution.
  - 16.4.5 the drawings and specifications particular to the alternative solution.
  - 16.4.6 a technical note on the basic concept of the alternative solution and, where appropriate, drawings and calculations.
  - 16.4.7 for lump sum contracts an itemised breakdown of the overall price as modified by the alternative solution.
  - 16.4.8 for unit price contracts a list of quantities and/or a price schedule as modified by the alternative solution.

## **17. Price**

- 17.1 The Contract shall be for the whole Works based on the priced Bill of Quantities or priced Activity Schedule for lump sum contracts submitted by the Bidder. The type of contract (unit price based on Bill of Quantities or lump sum based on Activity Schedule) is specified in the Bid Data Sheet.
- 17.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities (for lump sum contracts, described in the drawings and specifications and listed in the Activity

Schedule). Items for which no rate or price is entered by the Bidder shall not be paid for by the Procuring Organisation when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities or Activity Schedule.

- 17.3 All duties, taxes and other levies payable by the Bidder under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Bids, shall be specifically indicated in the rates, prices, and total Bid price submitted by the Bidder (for lump sum contracts, "the rates and prices" are not applicable).
- 17.4 The rates and prices (or the lump sum price) quoted by the Bidder shall be fixed for the duration of the Contract and shall not be subject to any adjustment on any account.

## **18. Payments**

Payments shall be made in accordance with the provisions of Article 3 of the Contract.

## **19. Bid Security**

- 19.1 A Bid Security in the amount stated in Item "Bid Security" of the Bid Data Sheet and in the form contained in the Sample Forms shall be provided by Bidders.
- 19.2 The Bid Security shall forfeit in favour of the Procuring Organisation if the Bidder:
- 19.2.1 Withdraws its Bid after Bids have been opened, or
  - 19.2.2 When requested to conclude a contract refuses to do so, or
  - 19.2.3 Is excluded pursuant to Clause 7.2 hereof, or
  - 19.2.4 Is determined knowingly to have presented any invalid documents or provided untrue information as part of its Bid.
- 19.3 The securities of Bidders who's Bids are not accepted shall be released not later than 30 days after the expiry of the Bid validity period, as extended where appropriate.
- 19.4 The security of the successful Bidder shall be discharged when the Bidder has signed the contract and provided a performance security.

## **20 Contacting the Procuring Organisation**

- 20.1 Subject to Clause 29 hereof, no Bidder shall initiate any contact with the Procuring Organisation on any matter relating to its Bid, from the time of the Bid opening to the time the contract is awarded.
- 20.2 Any effort by a Bidder to influence the Procuring Organisation in its decisions on Bid evaluation, Bid comparison, or contract award may result in the rejection of the Bidder's Bid and to debarment of the Bidder by the Procuring Organisation.

## **21. Evaluation Currency**

The Bids will be evaluated on the basis of their price expressed in the currency of The Gambia. Where Bids are submitted in other currencies they shall be converted to the currency of The Gambia, for the purposes of Bid evaluation only, at the selling rates established by the Central Bank of The Gambia on the date specified for the opening of Bids.

## **22. Sealing and Marking of Envelopes**

- 22.1 The Bid, the annexes thereto as stipulated in the Instructions to Bidders and the supporting documents, including the copies mentioned therein, shall be placed in a sealed envelope. If self-adhesive envelopes are used they shall be closed with adhesive tape and the Bidder shall sign over the top of the tape.

- 22.2 The envelope shall bear only:
- 22.2.1 the address designated for submission of Bids in Item "Submission Address" of the Bid Data Sheet.
  - 22.2.2 the name/title of the Invitation to Bid in reply to which the Bid is being submitted and the Bid reference number.
  - 22.2.3 where appropriate, the numbers of the lots Bided for.
  - 22.2.4 the words "not to be opened before the Bid opening session".
- 22.3 Within the sealed envelope must be contained two inner envelopes, each marked in accordance with Clauses 22.2.1 to 22.2.4 hereof, as follows:
- 22.3.1 Envelope marked "Qualification Certification", containing the certification detailed in Clause 7.2 hereof.
  - 22.3.2 Envelope marked "Technical-Financial Bid", containing the Bidder's technical and financial proposal and related documents.
- 22.4 Alternative solutions shall be submitted separately and shall be marked with the additional wording "Alternative Solution".

### **23. Signing of Bids**

- 23.1 The Bid shall be signed by the Bidder or its duly authorised agent as required by the Instructions to Bidders. It shall be drawn up in a single original bearing the word "Original". The number of copies to be supplied by the Bidder is stated in Item "Number of Copies" of the Bid Data Sheet. Copies shall be signed in the same way as the original and shall bear the word "Copy". In the event of any discrepancy between the original and the copies, the original shall govern.
- 23.2 The original and the copies of the Bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person duly authorised to bind the Bidder to the contract. The person signing the Bid shall initial all pages of the Bid, except for unamended printed literature.
- 23.3 Any interlineations, erasures, or overwriting shall be valid only if they are initialled by the person signing the Bid.
- 23.4 A Bid submitted by an agent must state the name of the principal on whose behalf he is acting. No agent may represent more than one Bidder. Agents shall attach to the Bid the simple contract or notarial act or deed that empowers them to act on behalf of the principal. A signature to a deed must be certified in accordance with the national law of the country of the principal.

### **24 Joint Bids**

- 24.1 If a Bidder is a joint venture or consortium of two or more persons the Bid must be single with the object of securing a single contract. Each person must sign the Bid, and all such persons shall be jointly and severally bound by the Bid and any resulting contract according to the laws of The Gambia. The Bidder shall designate one of such persons to act as a leader with authority to bind the joint venture or consortium. The composition or constitution of the joint venture or consortium shall not be altered at any time from submission of Bid to completion of subsequent contract, if awarded, without the prior consent in writing of the Procuring Organisation. Each member of a joint venture or consortium must comply individually with the qualification requirements stated in Clause 7.2 hereof.
- 24.2 The Bid may be signed by the representative of the joint venture or consortium only if he has been expressly so authorised in writing by the members of the joint venture or consortium, and the authorising contract, notaries act or deed is attached to the Bid. All signatures to the authorising instrument must be certified in accordance with the national laws and regulations of each of the parties comprising the joint venture or the consortium together with the Powers of Attorney

establishing, in writing, that the signatories to the Bid are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide proof of evidence of eligibility as if he, himself, were the Bidder.

## **25. Computation of Time Limits**

The periods and time limits referred to in these Instructions to Bidders and in other contract documents shall be computed as follows:

- 25.1 The periods and time limits shall begin to run from the beginning of the day following the date of the act or deed, which serves as the starting point for those periods or time limits.
- 25.2 Where a period or time limit is stated in days it shall expire at the end of the last day of the period or time limit laid down. Where a period or time limit is fixed in months it shall end on the day having the same number as the day on which it began. In the event of the last month of a period or time limit not having a day with the same number as the date on which it began the period or time limit shall expire at the end of the last day of the month.
- 25.3 Where the last day of a period or time limit falls on a public or any other general holiday in the State in which the obligation subject to the period or time limit is to be performed, the period or time limit shall be extended until the end of the next working day.

## **26. Withdrawal and Amendments**

- 26.1 Any Bidder may modify or withdraw its Bid before the deadline for the submission of Bids, provided that written notice of such modification or withdrawal is received by the Procuring Organisation prior to that deadline.
- 26.2 Withdrawals are unconditional and end further participation in the Bidding procedure.
- 26.3 The modification notice shall be prepared, sealed, marked and dispatched as the original Bid. It shall be identified as a modification of the original Bid.

## **27. Opening Session**

Bids will be opened in public session immediately after the Bid deadline at the date, time and address stipulated at Item "Bid Opening" of the Bid Data Sheet. The procedure to be followed is:

- 27.1 The envelope containing the Qualification certification shall be opened and checked to ensure that all necessary requirements are present.
- 27.2 Any Bid containing any discrepancy in its Qualification certification shall be disqualified. The envelope containing its Technical-Financial proposal shall not be opened, but shall be returned to the Bidder.
- 27.3 All Bids containing the required complete certification shall have:
  - 27.3.1 The envelopes containing their Technical-Financial proposals opened.
  - 27.3.2 The names of the Bidders and their total Bid amounts read out.
- 27.4 The Procuring Organisation will prepare minutes of the opening session.

## **28. Explanations and Correction of Arithmetical Errors and Minor Informalities**

- 28.1 The Procuring Organisation may request Bidders to provide written explanation of any part of their Bids. Such requests shall be for clarification purposes only, and shall neither entitle nor require Bidders to modify their Bids in any way.
- 28.2 Bidders failing to provide written explanation within 7 days of receipt of the Procuring Organisation's request may be excluded from the Bid.

- 28.3 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and the quantity, the unit price shall prevail, and the total price shall be corrected accordingly. If there is a discrepancy between words and figures, the amount in words shall prevail. If the Bidder does not accept such correction of errors its Bid shall be rejected, and its Bid security forfeited.
- 28.4 The Procuring Organisation may waive any minor informality, nonconformity, or irregularity in a Bid which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Bidder.
- 28.5 Prior to the detailed evaluation, pursuant to Clause 31, the Procuring Organisation will determine the substantial responsiveness of each Bid to the Bid documents. For purposes of these clauses, a substantially responsive Bid is one that conforms to all the terms and conditions of the Bid documents without material deviations. Deviations from, or objections or reservations to critical provisions, such as those concerning Bid Security, Applicable Law, and Taxes and Duties, will be deemed to be a material deviation. The Procuring Organisation's determination of a Bid's responsiveness is to be based on the contents of the Bid itself without recourse to extrinsic evidence.
- 28.6 If a Bid is not substantially responsive, it will be rejected by the Procuring Organisation and may not be subsequently made responsive by the Bidder by correction of the non-conformity.

## **29. Bid Acceptance/Variations**

- 29.1 The carrying out of an invitation to Bid shall not oblige the Procuring Organisation to accept any Bid or award any contract.
- 29.2 The Procuring Organisation shall not be liable for any compensation to Bidders whose Bids have not been accepted.
- 29.3 All Bidders shall be informed in writing about the result of their Bid. The Procuring Organisation shall not be obliged to state the reasons for its choice nor enter into any discussion or correspondence with Bidders on the results of the Invitation to Bid.

## **30. Preliminary Examination**

- 30.1 The Procuring Organisation will examine the Bids to determine whether they are complete, whether any arithmetical errors have been made, whether required securities have been furnished, whether the documents have been properly signed, and whether the Bids are generally in order.
- 30.2 Arithmetical errors will be rectified pursuant to the provision set out in Clause 28.3 hereof.
- 30.3 Prior to the detailed evaluation, pursuant to Clause 31, the Procuring Organisation will determine the substantial responsiveness of each Bid to the Bid documents. For purposes of these Clauses, a substantially responsive Bid is one which conforms to all the terms and conditions of the Bid documents without material deviations. Deviations from, or objections or reservations to critical provisions, such as those concerning Bid Security, Taxes and Duties, will be deemed to be a material deviation. The Procuring Organisation's determination of a Bid's responsiveness is to be based on the contents of the Bid itself without recourse to extrinsic evidence.
- 30.4 If a Bid is not substantially responsive, it will be rejected by the Procuring Organisation and may not subsequently be made responsive by the Bidder by correction of the nonconformity.

## **31. Evaluation of Bids**

- 31.1 The Procuring Organisation shall evaluate and compare the Bids that have been determined to be substantially responsive, pursuant to Clause 30 hereof, in accordance with the procedures and criteria set forth in the subsequent provisions.

31.2 The successful Bid shall be:

31.2.1 The Bid with the lowest Bid price, (i) subject to any margin of preference applied pursuant to Clause 31.3 and 31.4 hereof; and (ii) with exclusion of all customs and other duties he is subject to; or

31.2.2 If the Procuring Organisation has so stipulated in the Bid documents, the lowest evaluated Bid determined on the basis of criteria specified in the Bid documents, which criteria shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms wherever practicable.

31.3 In determining the lowest evaluated Bid in accordance with Clause 31.2.2 herein, the Procuring Organisation may consider only the following:

(a) the Bid price, with exclusion of all customs and other duties and subject to any margin of preference applied pursuant to Clause 31.4 herein;

(b) Life cycle costs, including the cost of operating, maintaining and repairing the works, the time for completion of the works, the functional characteristics of the works, the terms of payment and of guarantee in respect of the works; and

(c) The effect that acceptance of a Bid would have on the environment, the extent of local content, including local manufacture, labour and materials, in works being offered by Bidders, the transfer of technology and the development of managerial, scientific and operational skills.

31.4 Preference for domestic contractors

31.4.1 Domestic contractors are those determined by the GPPA to be of Gambian origin. Domestic contractors may receive a margin of preference in bid evaluation for which this clause shall apply.

31.4.2 Domestic bidders shall provide all evidence necessary to establish that they meet the following criteria to be eligible for a 7½ percent margin of preference in the comparison of their bids with those of bidders who do not qualify for the preference. They should

(a) Be registered within Gambia;

(b) Have majority ownership by Gambian nationals;

(c) Not subcontract more than 50 percent of the Contract Price, excluding provisional sums, to foreign contractors; and

(d) Satisfy other criteria stipulated in the solicitation as to bidder qualifications.

31.4.3 Joint ventures between domestic and foreign firms shall be eligible for the margin of preference provided that:

(a) The domestic partner or partners individually satisfy the above criteria of eligibility for the preference;

(b) The domestic partner or partners demonstrate a beneficiary interest of no less than 50 percent in the joint venture, as demonstrated by the profit and loss sharing provisions, if any, of the joint venture agreement;

(c) The domestic partner or partners will, under the arrangements proposed, execute at least 50 percent of the Works measured in terms of the Contract Price, excluding provisional sums (always provided that the domestic partner or partners are qualified to carry out that amount of work, in accordance with the work

specified in this solicitation), and that the said 50 percent shall exclude any materials or Plant which are to be imported by the domestic partner(s); and

- (d) Satisfy other criteria, if any, stipulated in the solicitation.

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

- (a) After bids have been converted to a single currency, if required, responsive bids will be classified into the following groups:
- (i) Group A: bids offered by domestic bidders and joint ventures meeting the criteria set out in this provision; and
  - (ii) Group B: all other bids.
- (b) For the purpose of further evaluation and comparison of bids only, an amount equal to 7½ percent of the evaluated Bid Price determined in accordance with this provision will be added to all bids classified in Group B.

31.4.5 Alternative offers, where solicited or permitted, will be evaluated separately, and shall be subject to the margin of preference in accordance with this Sub-Clause 31.4.

## **32. Advance Payment**

The Procuring Organisation shall make an Advance Payment, subject to a maximum amount, as stated in the Bid Data Sheet. In order to receive the Advance Payment the Bidder shall make an estimate of the expenses that will be incurred in order to commence work and shall include this requirement in its Bid. These expenses shall relate to the purchase of equipment, machinery and materials, and the engagement of labour during the first month beginning with the date of the Procuring Organisation's "Notice to Proceed" as specified in Item 22 of the Contract Data.

## **33. Award of Contracts**

33.1 The Procuring Organisation shall conclude a contract with the Bidder or Bidders who's Bid(s) have been determined to be the lowest evaluated responsive Bid(s).

33.2 The procedure for concluding the contract shall be as follows:

33.2.1 The Procuring Organisation shall notify the Bidder in writing before the validity of its Bid expires that its Bid has been accepted. Such notification shall be in the form of the Sample Form of Notification of Award hereof, and shall be accompanied by a contract form in the form of the Sample Contract Form.

33.2.2 The notification also shall require that the Bidder provide the Procuring Organisation with the performance security defined in Article 4 of the General Conditions of Contract within the number of days also specified therein. Failure to provide the performance security within the period specified shall result in withdrawal of the contract award and forfeiture of the Bidder's Bid security.

33.2.3 In order to validate the contract and accept the conditions stated in it the Bidder shall return the acknowledgement copy of the contract form signed by him.

33.2.4 The contract shall become effective on the date signed by the parties.



## SECTION 2 -- BID DATA SHEET

Contract No.: \_\_\_\_\_

Project No.: \_\_\_\_\_

Name of Contract: \_\_\_\_\_

Name of Project: \_\_\_\_\_

### 1. Name of Procuring Organisation – ITEM 1 of Letter of Invitation

Name of Procuring Organisation: \_\_\_\_\_

### 2. Address of Procuring Organisation – Item Instruction 11 to Bidders Letter of Invitation

Procuring Organisation's address, e-mail, telephone, and fax numbers are: \_\_\_\_\_

### 3. Number and Amount of Loan or Credit (when applicable)

The loan or credit number is: \_\_\_\_\_

The amount of the loan or credit is: \_\_\_\_\_

### 4. Source of Funds – Instruction 2 to Bidders

Loan from the World Bank:

*[For loans other than from the World Bank, the Procuring Organisation shall indicate the full name of the source]*

### 5. Number of Copies –

The number of copies of Bids to be submitted by Bidders is: \_\_\_\_\_

### 6. Submission Address – Item 8 of Invitation to Bid

The address to which Bids shall be submitted is: \_\_\_\_\_

### 7. Deadline – Item 8 of Invitation to Bid

The deadline for Bid submission is: \_\_\_\_\_

### 8. Bid Opening – Item 9 of Invitation to Bid

Time, date and place for Bid opening: \_\_\_\_\_

### 9. Clarification Meeting –Item 4 of Invitation to Bid

If a Bid clarification meeting is necessary, separate notification will be provided to bidders.

### 10. Equipment

The essential equipment to be made available for the Contract by the successful Bidder is \_\_\_\_\_ *[insert details of equipment]*

### 11. Additional Materials

Additional materials to be submitted by Bidders are \_\_\_\_\_ *[insert quantity, unit of measure and description of additional materials]*

### 12. Type of Contract – Item 7 of Contract Data

This is a "Unit Price Contract based on Priced Bill of Quantities"/"Lump Sum Contract based on Priced Activity Schedule". *[Delete as appropriate].*

### 13. Works – Item 2 of Letter of Invitation

The works required to be performed are: \_\_\_\_\_

### 14. Joint Venture

Entering into a joint venture is permitted: Yes  No

### 15. Sub-contracting

Sub-contracting is permitted: Yes  No

**16. Alternative Solutions**

Alternative solutions are/are not *[delete as appropriate]* allowed as a separate offer in addition to the present Bid. Where alternative solutions are permitted, they are subject to the following conditions:

*(Limitations)*

*(Design criteria)*

*(Design responsibility)*

*(Other requirements)*

*(Checking, revision and approval procedures)*

**17. Evaluation Criteria – Instruction 31 to Bidders**

Domestic preference does/does not *[delete as appropriate]* apply. The evaluation criteria are:

**18. Advance Payment – Item 20 of Contract Data**

The advance payment shall be limited to \_\_\_\_\_ *[insert number]* percent of the Contract Price.

**19. Number and Period of Works – Items 3 and 4 of Contract Data**

The number of works is \_\_\_\_\_ *[insert number]* and the period for completion of the Works is \_\_\_\_\_ *[insert period]*.

**20. Technical Director – Instruction 8.2 to Bidders**

The minimum experience of the Technical Director is \_\_\_\_\_ *[insert number]* years.

**21. Bid Security – Instruction 19 to Bidders**

The amount of the Bid security is \_\_\_\_\_ *[indicate amount]* and it shall remain valid until \_\_\_\_\_ *[indicate validity period]*:

**22. Bid Validity Period – Instruction 5.3 to Bidders**

The period for which Bidders shall remain bound by their Bids is:

**23. Previous experience**

The similar contracts that Bidders shall have performed previously are a minimum number of \_\_\_\_\_ *[insert number]* with a minimum value of \_\_\_\_\_ *[insert value]*.

### SECTION 3 -- DRAFT CONTRACT FORM

#### **PARTIES**

BETWEEN: \_\_\_\_\_ (insert name of Procuring Organisation),  
represented by the \_\_\_\_\_ [insert name and address of Accounting Officer] (hereinafter referred to as the  
"Procuring Organisation ")

AND:

\_\_\_\_\_ [Insert name and address of Contractor] represented by  
\_\_\_\_\_ (hereinafter referred to as the "Contractor")

Project Title & Number: \_\_\_\_\_

Contract No: \_\_\_\_\_

This Contract follows Bid \_\_\_\_\_ [state title & no] and the Contractor's offer dated  
\_\_\_\_\_ [state date] (as amended hereafter).

#### **WHEREAS:**

- the Procuring Organisation is desirous that certain Works should be executed by the Contractor,  
\_\_\_\_\_ and has accepted a Bid by the Contractor for the execution and completion of such  
Works.

#### **NOW THIS AGREEMENT WITNESSETH as follows:**

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
  - ◆ The Contract Form;
  - ◆ The Contract Data;
  - ◆ The General Conditions of Contract;
  - ◆ The Special Conditions of Contract;
  - ◆ The Specifications;
  - ◆ The Drawings;
  - ◆ The Bill of Quantities or the Activity Schedule;
  - ◆ The Procuring Organisation's Notification of Award;
  - ◆ The Form of Security for Advance Payment;
  - ◆ The Form of Performance Security.
3. In consideration of the payments to be made by the Procuring Organisation to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Procuring Organisation to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Procuring Organisation 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.

5. For any aspect not specifically referred to in this Contract Form, reference shall be made to the documents mentioned under Article 2 herein.

SIGNED BY: -----  
FOR: PROCURING ORGANISATION

SIGNED BY: -----  
FOR: CONTRACTOR

-----  
(Witness)

-----  
(Witness)

**SECTION 4 -- CONTRACT DATA**

	General Conditions
1. The Procuring Organisation is: Name: Address: Name of Authorised Representative:	1.1 (f)
The Project Manager is: Name: Address: Name of Authorised representative:	1.1(t)
2. The name and identification number of the Contract is <i>[insert name and number as indicated in the Invitation for Bids]</i>	1.1(a)
3. The Works consist of <i>[insert brief summary, including relationship to other contracts under the Project].</i>	1.1(cc)
4. The Start Date is <i>[insert date]</i>	1.1(y)
5. The Completion Date for the whole of the Works is <i>[If different dates are specified for completion of the Works by section, "sectional completion", these dates should be listed here].</i>	1.1(l)
6. The Site is located at _____ <i>[insert location]</i> and is defined in drawings nos: _____ <i>[insert numbers].</i>	1.1(g)
7. This is a "Unit Price Contract based on Priced Bill of Quantities"/"Lump Sum Contract based on priced Activity Schedule" <i>[delete as appropriate].</i>	
8. The language of the Contract is English	2.1
9. The period within which approvals for sub-contracting or assigning the Contract shall be granted or denied is 30 days from receipt by the Project Manager or Procuring Organisation of the request for approval.	3.2
10. The following document is also part of the Contract:  *The Schedule of Key Personnel	4.1
11. The minimum insurance covers are:  (a) Loss through damage to or loss of Works and Materials <i>[insert amount]</i>  (b) Loss through damage to or loss of Equipment <i>[insert amount]</i>  (c) Loss through damage to or loss of property (except the Works, Materials and Equipment) in connection with the Contract <i>[insert amount]</i>  (d) Personal injury or death; third party liability <i>[insert amount]</i>	7.1

<p>12. The period for submission of the Programme is <i>[insert number]</i> days from the date of signature of the Main Contract. The period between Programme updates is _____ <i>[insert number]</i> days.</p>	<p>14</p>
<p>16. In the case of Lump Sum Contracts, Article 22.4 is replaced as follows:  "22.4 The value of work executed shall comprise the value of completed activities in the Activity Schedule."</p>	<p>22.4</p>
<p>18. The liquidated damages for the whole of the Works are  <i>[insert percentage of the final Contract Price]</i> per day.  <i>[If sectional Completion and Damages per Section have been agreed, the latter should be specified here].</i></p>	<p>29</p>
<p>19. The maximum amount of liquidated damages for the whole of the Works is _____ <i>[insert number]</i> percent of the final Contract Price.</p>	<p>29</p>
<p>20. The amount of the advance payment is _____ <i>[insert amount]</i>.</p>	<p>30.1</p>
<p>21. The amount of retention money is _____ <i>[insert number]</i> % of each payment due to the Contractor up to a maximum of _____ <i>[insert number]</i> % of the total contract amount.</p>	<p>31</p>
<p>22. The date of the «Notice to Proceed» is _____ <i>[insert date]</i>.</p>	
<p>23. The percentage to apply to the value of the work not completed, representing the Procuring Organisation's additional cost for completing the Works is _____ <i>[insert number]</i>.</p>	<p>40.1</p>
<p>24. The amount of the Performance Security is _____ <i>[insert amount]</i>.</p>	<p>12.1</p>
<p>25. The provisional sums or contingency allowances referred to in Item 4 of the Bill of Quantities/Activity Schedule are _____ <i>[insert amounts]</i>. They will be used under the authority of _____ <i>[insert authority]</i> and in the following manner _____ <i>[insert procedures for use]</i></p>	
<p>26. The number of copies and date for submission of As-built drawings are respectively, _____ and _____  26.1 The amount to be withheld is _____</p>	<p>45</p>

## SECTION 5 -- GENERAL CONDITIONS

### Article 1: Definitions

- 1.1 In this Contract, the following terms shall be interpreted as indicated:
- (a) "The Contract" means the agreement entered into between the Procuring Organisation and the Contractor, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein;
  - (b) "The Contract Price" means the price payable to the Contractor under the Contract for the full and proper performance of its contractual obligations;
  - (c) "The Services" means those services ancillary to the supply of the Works, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Contractor covered under the Contract;
  - (d) "GCC" means the General Conditions of Contract contained in this section;
  - (e) "SCC" means the Special Conditions of Contract;
  - (f) "The Procuring Organisation" means the organisation commissioning the Works, as named in the Bid Data Sheet and in the Contract Data;
  - (g) "The Project Site", where applicable, means the place or places named in the Contract Data;
  - (h) "Day" means calendar day.
  - (i) "Activity Schedule" means the priced and completed schedule forming part of the Bid.
  - (j) "Bill of Quantities" means the priced and completed Bill of Quantities forming part of the Bid.
  - (k) "Compensation Events" are those defined in Article 25 hereunder.
  - (l) The "Completion Date" is the date of completion of the Works as certified by the Procuring Organisation, in accordance with Article 34
  - (m) The "Contractor" is a person or corporate body whose Bid to carry out the Works has been accepted by the Procuring Organisation.
  - (n) The "Contractor's Bid" is the completed Bid document submitted by the Contractor to the Procuring Organisation.
  - (o) "Dayworks" are additional, varied work inputs subject to payment on a time basis for the Contractor's employees and equipment, in addition to payments for associated materials and plant.
  - (p) A "Defect" is any part of the Works not completed in accordance with the Contract.
  - (q) The "Defects Liability Period" is the period named in Item 13 of the Contract Data and calculated from the Completion Date.
  - (r) The "Defects Correction Period" is the period from the time of issue by the Project Manager to the Contractor of notice of defect until the said defect is corrected. Drawings include calculations and other information provided or approved by the Procuring Organisation for the execution of the Contract.

- (s) The "Defects Correction Certificate" is the notice given by the Project Manager to the Contractor before the end of the Defects Liability Period indicating the Defect to be remedied by the Contractor within the length of time specified by the Project Manager therein.
- (t) The "Project Manager" is the person named in Item 1 of the Contract Data (or any other competent person appointed by the Procuring Organisation and notified to the Contractor to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- (u) "Equipment" is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (v) The "Initial Contract Price" is the Contract price listed in the Procuring Organisation's Letter of Acceptance.
- (w) The "Completion Date" is the date on which it is required that the Contractor shall complete the Works. The Completion Date is specified in Item 5 of the Contract Data. Only the Procuring Organisation may revise the Completion Date by issuing an extension of time or an acceleration order.
- (x) "Materials" are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (y) The "Start Date" is given in Item 4 of the Contract Data. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (z) A "Subcontractor" is a person or corporate body who has a Contract with the Contractor, which includes work on the Site.
- (aa) "Temporary Works" are works designed, constructed, installed and removed by the Contractor that are needed for the construction or installation of the Works.
- (bb) A "Variation" is an instruction given by the Procuring Organisation which varies the original work requirement.
- (cc) The "Works" are what the Contract requires the Contractor to construct, install, and turn over to the Procuring Organisation, as defined in Item 3 of the Contract Data.
- (dd) The "Notice to Proceed" is the notice to the Contractor issued by the Project Manager within the time stated in the Appendix to Bid, following which the Contractor shall commence the Works as soon as is reasonably possible.

## **Article 2: Language and Law**

- 2.1 The language of the Contract is English.
- 2.2 The law applicable to the Contract shall be the law of The Gambia.

## **Article 3: Sub-contracting**

- 3.1 A sub-contract shall be valid only if it is a written agreement by which the Contractor entrusts performance of part of its Contract to a third party.
- 3.2 The Contractor shall not sub-contract without the prior written authorisation of the Procuring Organisation. The elements of the Contract to be sub-contracted and the identity of the sub-Contractors shall be notified to the Procuring Organisation. The Procuring Organisation shall, within 30 days of receipt of the notification, notify the Contractor of its decision, stating reasons should he withhold such authorisation.
- 3.3 Sub-Contractors must satisfy the eligibility criteria applicable for the award of the Contract.



- 3.4 The Procuring Organisation shall have no contractual relation with the sub-Contractors, but may avail itself of any rights the Contractor has acquired against them.

#### **Article 4: Personnel**

- 4.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in Item 10 of the Contract Data, to carry out the functions stated in the Schedule. The Contractor also shall employ such further personnel that the Project Manager approves or stipulates be added to the Schedule of Key Personnel. The Project Manager shall approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.
- 4.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within 72 hours and has no further connection with the work in the Contract.

#### **Article 5: Procuring Organisation's Risks**

- 5.1 From the Start Date until the Defects Correction Certificate has been issued, the Procuring Organisation carries the following risks:
- a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials and Equipment), which are due to:
    - ◆ use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
    - ◆ negligence, breach of statutory duty, or interference with any legal right by the Procuring Organisation or by any person employed by or contracted to him except the Contractor.
  - b) The risk of damage to the Works, Plant, Materials and Equipment to the extent that it is due to a fault of the Procuring Organisation or in the Procuring Organisation's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 5.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss or of damage to the Works, Plant and Materials is a Procuring Organisation's risk except loss or damage due to:
- a) A defect that existed on the Completion Date,
  - b) An event occurring before the Completion Date, which was not itself a Procuring Organisation's risk, or
  - c) The activities of the Contractor on the Site after the Completion Date.

#### **Article 6: Contractor's Risk**

From the Starting Date until the Defects Correction Certificate has been issued, the risks of personal injury, death, and loss of or damage to property and adjacent property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Procuring Organisation's risks are carried by the Contractor.

#### **Article 7: Insurance**

- 7.1 The Contractor shall provide, in the joint names of the Procuring Organisation and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in Item 11 of the Contract Data, for the following events which are due to the Contractor's risks:

- a) Loss of or damage to the Works, Equipment, Plant, and Materials;
  - b) Loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
  - c) Personal injury or death; third party liability.
- 7.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for approval within 15 days of receipt by the Contractor of the Procuring Organisation's Letter of Acceptance. All such insurance shall provide for compensation required to rectify the loss or damage incurred. If the Contractor fails to provide the required certificates, the Contract shall be considered as annulled. However, the Procuring Organisation at its discretion may decide to extend the period for submission of insurance certificates or take out the insurance and deduct the cost of premiums from the Contractor's earnings.
- 7.3 Alterations to the terms of insurance shall not be made without the approval of the Procuring Organisation.

### **Article 8: Inspection and Testing**

The Procuring Organisation's Representative shall be entitled, during manufacture, fabrication or preparation to inspect and witness testing of the materials and Plant to be supplied under the Contract. If materials or Plant are being manufactured, fabricated or prepared in workshops or places other than those of the Contractor, the Contractor shall obtain permission for the Representative to witness such inspection and testing in those workshops or places. Such inspection or the witnessing of testing shall not release the Contractor from any obligation under the Contract. Costs incurred by the Representative shall be for the account of the Procuring Organisation.

### **Article 9: Contractor to Construct the Work**

- 9.1. The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 9.1 The Contractor shall commence the Works as soon as is reasonably possible after the receipt by him of the Notice to Proceed, which notice shall be issued within the time stated in the Appendix to Bid after the date of the Notification of Award. Thereafter, the Contractor shall proceed with the Works with due expedition and without delay.

### **Article 10: Completion Date**

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

### **Article 11: Conflict of Interest**

- 11.1 Bidders (including all partners in a joint venture) must not be associated, nor have been associated in the past, with a consultant or any other entity that has prepared the terms of reference, Bid documents or other documents for the assignment. Any such association shall result in disqualification of the Bidder.
- 11.2 Bidders (including all partners in a joint venture) must not have prepared or advised on the terms of reference, Bid documents or other documents for the assignment. Any such preparation or advisory work shall result in disqualification of the Bidder.
- 11.3 The successful Bidder (including all partners in a joint venture) and all entities associated with the successful Bidder are prohibited from participating in the assignment in any other manner or role than that provided for in the Bid.
- 11.4 The successful Bidder (including all partners in a joint venture) and all entities associated with the successful Bidder are prohibited for \_\_\_\_\_ [specify period] from participating in any Bid or Contract that may result from partial or full completion of the assignment covered by this Bid.

## **Article 12: Performance Security**

- 12.1 Within 30 days of the date of this Contract the Contractor shall furnish to the Procuring Organisation a performance security in the amount specified in the Special Conditions of Contract and in the form provided for. Failure to provide such security within 30 days shall result in cancellation of the Contract and forfeiture of the Contractor's Bid security.
- 12.2 The performance security shall be payable to the Procuring Organisation as compensation for any loss resulting from the Contractor's failure to complete its obligations under the Contract.
- 12.3 The performance security shall be discharged by the Procuring Organisation and returned to the Contractor not later than 30 days following the date of completion of the Contractor's performance obligations under the Contract, including warranty obligations.
- 12.4 The performance security shall be issued in the form enclosed to these Bid documents.

## **Article 13: Safety**

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

## **Article 14: Programme**

Within the time stated in Item 12 of the Contract Data the Contractor shall submit to the Project Manager for approval a Programme showing the general methods, arrangements, order and timing for all the activities in the Works. The Contractor shall update the Programme at intervals no longer than the period stated in Item 12 of the Contract Data. The Project Manager's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Project Manager at any time. A revised programme shall show the effect of Variations and Compensation Events.

## **Article 15: Extension of the Completion Date**

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

## **Article 16: Delays Ordered by the Project Manager**

The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works. Delay or suspension of work by the Project Manager that increases the Contractor's costs shall be subject to equitable adjustment by the Procuring Organisation.

## **Article 17: Early Warning**

- 17.1 The Contractor shall inform the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 17.2 The Contractor shall co-operate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

## **Article 18: Correction of Defects**

- 18.1 The Project Manager shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in Item 13 of the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

- 18.2 Every time notice of a Defect is given the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.
- 18.3 All work executed by the Contractor in the form of amendment, reconstruction, and remedying defects, shrinkages or other faults as the Project Manager may, during the Defects Liability period, instruct the Contractor to execute shall be at the Contractor's own cost.

### **Article 19: Uncorrected Defects**

If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount, or the Procuring Organisation shall recover these amounts by deduction from the amounts due to the Contractor.

### **Article 20: Bill of Quantities**

- 20.1 The Bill of Quantities (for lump sum contracts entire Article 20 shall be replaced with a new Article as indicated in Item 14 of the Contract Data) shall contain items for the construction, installation, testing and commissioning work to be done by the Contractor.
- 20.2 The Bill of Quantities shall be used to calculate the Contract Price. The Contractor shall be paid for the quantity of the work actually done at the rate in the Bill of Quantities for each item.

### **Article 21: Changes in the Quantities**

If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent the Project Manager shall adjust the rate to allow for the change provided the change exceeds 1 percent of the Initial Contract Price [*for lump sum contracts this Article shall be replaced by a new Article as indicated in Item 15 of the Contract Data*]. In case the changes do not exceed 1 percent of the Contract Price this cost shall be borne by the Contractor.

### **Article 22: Payment Certificates**

- 22.1 The Contractor shall submit to the Project Manager at the end of each month a statement, in such form as is approved by the Procuring Organisation, showing the amounts to which the Contractor considers himself entitled up to the end of the month in respect of:
- a) The value of the permanent Works executed
  - b) Any other items in the Bill of Quantities including those for the Contractor's equipment, temporary works, and day works, etc
  - c) The percentage of the invoice value of listed materials and plant delivered by the Contractor on the Site for incorporation in the Permanent Works but not incorporated in such Works
  - d) Any other sum to which the Contractor may be entitled under the Contract
- 22.2 The Project Manager shall check the Contractor's executed Work and certify the amount to be paid to the Contractor.
- 22.3 The value of Work executed shall be determined by the Project Manager.
- 22.4 The value of Work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed [*for lump sum contracts this Article shall be replaced by a new Article as indicated in Item 16 of the Contract Data*].
- 22.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 22.6 Not later than 90 days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Project Manager a Statement of Completion, with supporting documents, in the detail and form approved by the Project Manager.

- 22.7 Not later than 60 days after the issue of the Defects Liability Certificate the Contractor shall submit to the Project Manager a final statement, with supporting documents, showing in detail and in the form approved by the Project Manager the value of all work done in accordance with the Contract.

### **Article 23: Payments**

- 23.1 Payments shall be adjusted by deductions for advance payments and retentions. The Procuring Organisation shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate.
- 23.2 Items of the Works for which no rate or price has been entered will not be paid for by the Procuring Organisation and shall be deemed covered by other rates and prices in the Contract.
- 23.3 Upon issue of the Taking-Over Certificate one half of the Retention Money shall be certified by the Project Manager for payment to the Contractor.
- 23.4 Upon expiry of the defects Liability Period for the Works the remaining half of the Retention Money shall be certified by the Project Manager for payment to the Contractor.

### **Article 24: Currency of Payment**

- 24.1 Where the Contract provides for payment in a foreign currency and payment in whole or in part is to be made to the Contractor, such payment shall not be subject to variations in the rate of exchange between specified foreign currencies and the currency of The Gambia.

### **Article 25: Compensation Events**

- 25.1 The following shall be considered Compensation Events:
- a) The Procuring Organisation does not give access to a part of the Site by the Site Possession Date stated in Item 17 of the Contract Data.
  - b) The Project Manager orders a delay or does not issue Drawings, Specifications or instructions required for execution of the Works on time.
  - c) The Project Manager instructs the Contractor to uncover or to carry out tests upon completed work, which is then found to have no Defects.
  - d) Other contractors, public authorities, utilities or the Procuring Organisation cause delay or extra cost to the Contractor.
  - e) The advance payment is delayed.
  - f) The Project Manager unreasonably delays issuing a certificate of completion.

If such an event occurs the Contract Price shall be equitably adjusted.

### **Article 26: General Obligations of the Contractor**

- 26.1 The Contractor shall carry out the duties entrusted to him by the present Contract loyally and impartially and in accordance with the best professional practices.
- 26.2 If the Contractor is a joint venture or consortium of two or more persons all such persons shall be jointly and severally bound to fulfil the terms of the Contract according to the laws of The Gambia.

### **Article 27: Price Adjustment**

Prices charged by the Contractor for the Works procured under the Contract shall not vary from the prices quoted by the Contractor in its Bid, with the exception of any price adjustments authorised in the SCC.

## **Article 28: Assignments**

- 28.1 An assignment shall be valid only if it is a written agreement by which the Contractor transfers its Contract or parts thereof to a third party/ies.
- 28.2 The Contractor shall not, without the prior written consent of the Procuring Organisation, assign the Contract or any part thereof, or any benefit or interest thereunder, except in the following cases:
- 28.2.1 A charge, in favour of the Contractor's bankers, on any monies due or to become due under the Contract, or
- 28.2.2 Assignment to the Contractor's insurers of the Contractor's right to obtain relief against any other person liable in cases where the insurers have discharged the Contractor's loss or liability.
- 28.3 The approval of an assignment by the Procuring Organisation shall not relieve the Contractor of its obligations under the Contract, neither for the part of the Contract already performed nor the part not assigned.
- 28.4 If the Contractor assigns its Contract, or any part thereof, without authorisation the Procuring Organisation may, without giving formal notice thereof, apply as of right the sanctions for breach of Contract.
- 28.5 Assignees must satisfy the eligibility criteria applicable to the award of the Contract.

## **Article 29: Liquidated Damages**

The Contractor shall pay liquidated damages to the Procuring Organisation at the rate per day stated in Item 18 of the Contract Data for each day that the Completion Date is later than the Required Date. The total amount of liquidated damages shall not exceed the amount defined in Item 19 of the Contract Data. The Procuring Organisation may deduct liquidated damages from any payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

## **Article 30: Advance Payment**

- 30.1 The Procuring Organisation shall make advance payment to the Contractor of the amount stated in Item 20 of the Contract Data after the Contractor has:
- a) Delivered to the site construction equipment and/or materials for initiating the Work, and
- b) Provided the Procuring Organisation with a Bank Guarantee in the full amount of the advance payment and in the form provided in the Bid Documents.
- 30.2 The Contractor is to use the advance payment only to pay for equipment, materials and other expenses required specifically for carrying out the Works. The Contractor shall demonstrate that the advance payment has been used in this way by supply of copies of invoices or other documents to the Project Manager.
- 30.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, to be recovered within one half of the completion period.

## **Article 31: Retention Moneys**

An amount, specified in Item 21 of the Contract Data, will be retained from each payment to the Contractor to assure performance of the work. This money will be paid out to the Contractor upon completion and satisfactory acceptance of the work and within 15 days of the issue by the Project Manager of the Defects Liability Certificate.

### **Article 32: Dayworks**

- 32.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 32.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- 32.3 The Contractor shall be paid for Dayworks as Work is performed, subject to obtaining signed Dayworks forms.

### **Article 33: Cost of Repairs**

Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction Period shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

### **Article 34: Completion and Taking Over**

- 34.1 When the whole of the Works have been substantially completed and have satisfactorily passed any tests on Completion prescribed by the Contract, the Contractor may give notice to that effect to the Project Manager, with a copy to the Procuring Organisation, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Project Manager to issue a Taking-Over Certificate in respect of the Works.
- 34.2 The Project Manager shall, within 28 days of the delivery of such a notice, either issue to the Contractor, with a copy to the Procuring Organisation, a Taking-Over Certificate, stating the date on which, in its opinion, the Works were substantially completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the work which, in the Project Manager's opinion, is required to be done by the Contractor before the issue of such a Certificate.
- 34.3 The Project Manager also shall notify the Contractor of any defects in the Works affecting substantial completion of the Works specified therein. The Contractor shall be entitled to receive such Taking-Over Certificate within 28 days of completion, to the satisfaction of the Project Manager, of the Works so specified and remedying any defects so notified.
- 34.4 Similarly, in accordance with the procedure set out in Clauses 34.1 to 34.3, the Contractor may request, and the Procuring Organisation shall issue a Taking-Over Certificate in respect of:
  - a) Any Section in respect of which a separate Time for Completion is provided for in the Bid, or
  - b) Any substantial part of the Permanent Works which has been both completed to the satisfaction of the Procuring Organisation and, other than as provided for in the Contract, occupied or used by the Procuring Organisation, or
  - c) Any part of the Permanent Works which the Procuring Organisation has elected to occupy or use prior to completion, where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure.

### **Article 35: Final Account**

The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 15 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 15 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

### **Article 36: Tax**

The Contractor is liable for all taxes in accordance with the Laws of The Gambia. However, the Project Manager shall adjust the Contract Price if taxes, duties and other levies are changed between the date 28 days before submission of bids for the Contract and the date of the last completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such charges are not already reflected in the Contract Price.

### **Article 37: Force Majeure**

- 37.1 Neither party shall be considered to be in default or in breach of its obligations under the Contract if the performance of such obligations is prevented by any circumstance of force majeure which arises after the date of notification of award or the date when the Contract becomes effective, whichever is earlier.
- 37.2 In order to rely upon force majeure the Contractor or the Procuring Organisation must show that they were unable to perform the relevant operations within the period laid down as a result of unusual circumstances outside their control, the consequences of which, in spite of the exercise of due care on their part, they could not have avoided except at the cost of excessive sacrifice. For purposes of this clause, those circumstances include any event beyond the control of the Contractor and not involving the Contractor's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Procuring Organisation in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 37.3 The Contractor shall not be liable for liquidated damages or termination for default if, and to the extent that, its delay in performance or other failure to perform its obligations under the Contract is the result of an event of force majeure. The Procuring Organisation similarly shall not be liable to payment of interest on delayed payment, for non-performance or for termination by the Contractor for default if, and to the extent that, the Procuring Organisation's delay or other failure to perform its obligations is the result of force majeure.
- 37.4 If either party considers that any circumstances of force majeure have occurred which may affect the performance of its obligations he shall promptly notify the other party, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of its obligations which are not prevented by the force majeure event. However, the Contractor shall not put into effect such alternative means for performance of its obligations which are not prevented by the force majeure event unless directed to do so by the Procuring Organisation.
- 37.5 If circumstances of force majeure have occurred and continue for a period of 90 days then, notwithstanding any extension of time for completion of the Contract that the Contractor by reason thereof may have been granted, either party shall be entitled to serve upon the other 30 days notice to terminate the Contract. If at the expiry of the period of 30 days force majeure still continues the Contract shall terminate and, in consequence thereof, the parties shall be released from further performance of the Contract.

### **Article 38: Modifications**

Any modification to the Contract shall be set out in an amendment, which shall be drawn up before the execution of the modification is begun, and signed by both parties.

### **Article 39: Termination**

- 39.1 The Procuring Organisation or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 39.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- a) the Contractor stops work for 15 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorised by the Project Manager.



- b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 15 days or agreement reached on payments due to the Contractor for the cost of delay;
  - c) the Procuring Organisation or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - d) a payment certified by the Project Manager is not paid by the Procuring Organisation to the Contractor within 30 days of the date of the Project Manager's certificate;
  - e) the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within 30 days of the date of the notice;
  - f) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in Item 19 of the Contract Data.
- 39.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Clause 39.2 above, the Project Manager shall decide whether the breach is fundamental or not.
- 39.4 Notwithstanding the above, the Procuring Organisation may terminate the Contract for convenience by giving the Contractor thirty days notice in writing.
- 39.5 If the Contract is terminated the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site within 15 days of completion of the notice period.

#### **Article 40: Payment upon Termination**

- 40.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the Work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the Work not completed, as indicated in Item 23 of the Contract Data. Additional Liquidated Damages shall not apply. If the total amount due to the Procuring Organisation exceeds any payment due to the Contractor the difference shall be a debt payable to the Procuring Organisation.
- 40.2 If the Contract is terminated for the Procuring Organisation's convenience, or because of a fundamental breach of Contract by the Procuring Organisation, the Project Manager shall issue a certificate for the value of the Work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

#### **Article 41: Property**

All Materials and Construction Equipment on the Site, Plant, Temporary Works, and Works shall be deemed to be the property of the Procuring Organisation if the Contract is terminated because of the Contractor's default.

#### **Article 42: Release from Performance**

If the Contract is frustrated by the outbreak of war, or by any other event entirely outside the control of either the Procuring Organisation or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate, and shall be paid for all work carried out before receiving it, and for any work carried out afterwards for which an agreement has been reached.

#### **Article 43: Resolution of Disputes/Arbitration**

- 43.1 Any dispute, controversy or claim arising out of or relating to this Contract, and all its subsequent amendments, including without limitations the formation, validity, binding effect, interpretation, performance, breach or termination, which cannot be amicably settled by the Parties, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as in force on the date on which this Contract is executed.
- 43.2 The Parties agree upon that the appointing authority shall be the International Court of Arbitration of the International Chamber of Commerce of Paris (without administrative services).
- 43.3 The Arbitral Tribunal shall consist of three arbitrators appointed in compliance to the UNCITRAL Arbitration Rules.  
It is hereby agreed that the dispute, controversy or claim shall be decided in accordance with the applicable laws of The Gambia, as well as the trade usages observed and complied within the business community to whom the Parties belong.  
The place of arbitration shall be Banjul, The Gambia and the language to be used in the arbitration proceedings shall be English.
- 43.4 No request for settlement shall be submitted to the arbitrator unless an attempt has first been made to settle the dispute amicably within 120 days of the notification of the complaint or any other period the parties agree upon. The request for arbitration must be submitted within 60 days of the end of the said period of conciliation.
- 43.5 Both parties shall proceed diligently with performance of this Contract, pending final resolution of any dispute arising under the Contract.

#### **Article 44: Notices**

- 44.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing, or by fax, telex or cable confirmed in writing, to the other party's address.
- 44.2 A notice shall be effective when delivered or on its effective date, whichever is later.

#### **Article 45: As-built Drawings**

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

### **SECTION 6 -- Special Conditions of Contract**

#### **Price Adjustment (General Condition 27)**

General Condition 27 - Prices shall be adjusted in accordance with the provisions set out in Attachment I to these SCC.

#### **Insurance (General Condition 7)**

*[terms and conditions for insurance may be specified, if necessary].*

## Attachment I to the Special Conditions

### Price Adjustment:

Prices payable to the Contractor, as stated in the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labour and material components in accordance with the formula:

$$P_1 = P_o \left( a + b \frac{L_1}{L_o} + c \frac{M_1}{M_o} \right) - P_o$$

In which:

- $P_1$  = adjustment amount payable to the Contractor  
 $P_o$  = Contract Price (base price)  
 $a$  = fixed element representing profits and overheads included in the Contract Price and generally in the range of five (5) to fifteen (15) percent.  
 $b$  = estimated percentage of labour component in the Contract Price  
 $c$  = estimated percentage of material component in the Contract Price  
 $L_o, L_1$  = labour indices applicable to the contract on the base date and date for adjustment  
 $M_o, M_1$  = material indices for the major raw material as applicable to the contract on the base date and date for adjustment, respectively.

The coefficients  $a$ ,  $b$ , and  $c$  shall be specified by the Procuring Organisation in the Bid documents. The sum of the three coefficients should be one (1) in every application of the formula. The Bidder shall indicate the source of the indices and the base date indices in its Bid. Base date = thirty (30) days prior to the deadline for submission of the Bids. Date of adjustment = \_\_\_\_\_ weeks prior to the Required Completion Date.

Either party may invoke the above price adjustment formula subject to the following further conditions:

Price adjustment will be applied only if the resulting increase or decrease is more than two (2) percent of the Contract Price.

No price adjustment shall be allowed beyond the original Required Completion Date unless specifically stated in the extension letter. As a rule, no price adjustment shall be allowed for periods of delay for which the Contractor is entirely responsible. The Procuring Organisation will however be entitled to any decrease in the Contract Price of the Works subject to adjustment.

The total adjustment under this Clause shall be subject to a ceiling of plus or minus ten (10) percent of the Contract Price.

If the currency in which the Contract Price  $P^o$  is expressed is different from the currency of the origin of the labour and material indices, a correction factor will be applied to avoid incorrect adjustments of the Contract Price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.

No price adjustment shall be payable on the portion of the Contract Price paid to the Contractor as advanced payment.

## **SECTION 7 -- SPECIFICATIONS**

*[Insert fully detailed specifications for all goods and materials to be incorporated in the Works]*

## **DRAWINGS**

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

## SECTION 8 -- BILL OF QUANTITIES OR ACTIVITY SCHEDULE

*[In lump sum contracts, delete "Bill of Quantities" and replace with "Schedule of Activities" throughout this section.]*

### OBJECTIVES:

1. The objectives of the Bill of Quantities are:
  - a) to provide sufficient information on the quantities of Works to be performed to enable Bids to be prepared efficiently and accurately; and
  - b) when a Contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed.
2. In order to attain these objectives Works are itemised in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Bill of Quantities is as simple and brief as possible.

### DAYWORK SCHEDULE:

3. If included, a Daywork Schedule has been incorporated because the probability of unforeseen work, outside the items included in the Bill of Quantities, is high. To facilitate checking by the Procuring Organisation of the realism of rates quoted by Bidders, the Daywork Schedule comprises the following:
  - a) A list of the various classes of labour, materials, and constructional plant for which basic daywork rates or prices are to be inserted by the Bidder, together with a statement of the conditions under which the Contractor will be paid for work executed on a daywork basis.
  - b) Nominal quantities for each item of Daywork, to be priced by each Bidder at Daywork rates as Bided. The rate to be entered by the Bidder against each basic Daywork item should include the Contractor's profit, overheads, supervision, and other charges.

### PROVISIONAL SUMS:

4. A general provision for physical contingencies (quantity overruns) has been made by including a provisional sum in the Summary Bill of Quantities. Similarly, a contingency allowance for possible price increases has been provided as a provisional sum in the Summary Bill of Quantities. The inclusion of such provisional sums may facilitate future budgetary approvals by avoiding the need to request periodic supplementary approvals as the need arises. Where such provisional sums or contingency allowances are used, Item 25 of the Contract Data states the manner in which they will be used, and under whose authority.
5. The estimated cost of specialised work to be carried out, or of special goods to be supplied by other Contractors, is indicated in the relevant part of the Bill of Quantities as a particular provisional sum with an appropriate brief description. A separate procurement procedure may be carried out by the Procuring Organisation to select such specialised contractors. To provide an element of competition among the Bidders in respect of any facilities, amenities, attendance, etc., to be provided by the successful Bidder as prime Contractor for the use and convenience of the specialist contractors, each related provisional sum is followed by an item in the Bill of Quantities inviting the Bidder to quote for such amenities, facilities, attendance, etc.

**SECTION 9 -- BID FORM**

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

Bid Document Number: \_\_\_\_\_

To: \_\_\_\_\_

**WE, THE UNDERSIGNED, DECLARE THAT:**

- (a) We have examined and have no reservations to the Bid Document, including any amendments made [identify the amendment(s) by number] \_\_\_\_\_;
- (b) We offer to construct and install, in conformity with the Bid Documents and in accordance with the Conditions of Contract, Specification, Drawings, and Bill of Quantities, the Works specified therein;
- (c) The total price for our Bid is: \_\_\_\_\_;
- (d) Our Bid shall be valid for a period of \_\_\_\_\_ calendar days from the date fixed for the Bid submission deadline in accordance with the Bid Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (e) If our Bid is accepted, we undertake to provide a Performance Security in the amount of \_\_\_\_\_ percent of the contract price for the due performance of the contract;
- (f) If our Bid is accepted, we undertake to commence the Works as soon as is reasonably possible after the receipt of the Notification of Award, and to complete the whole of the Works specified in the Contract within the time stated in the Bid Documents.
- (g) We are not participating, as Bidders, in more than one Bid in this Bidding process;
- (h) We understand that this Bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal Contract is prepared and executed;
- (i) We understand that you are not bound to accept the lowest evaluated Bid or any other Bid you may receive.

**WE FURTHER CERTIFY THAT WE:**

- (i) possess the legal capacity to enter into the contract;
- (ii) possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capacity, experience in the procurement object, reputation and the personnel, to perform the contract;
- (iii) are not insolvent, in receivership, bankrupt or being wound up, my(our) business activities have not been suspended, and I(we) are not subject of a legal proceeding for any of the foregoing;
- (iv) have fulfilled our obligations to pay taxes and social security contributions;
- (v) are not subject to suspension of payments in accordance with the judgment of a court or a judgment declaring bankruptcy and resulting, in accordance with our national laws, in the total or partial loss of the right to administer and dispose of my(our) property nor is any such legal proceeding pending;
- (vi) are not guilty of serious misrepresentation with regard to information required for participation in a public procurement;
- (vii) are not in breach of a public procurement contract; and,

(viii) have performed previously the number and value of similar contracts as required in the qualification requirements of this procurement.

Name: \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signed: \_\_\_\_\_

Duly authorized to sign the Bid for and on the behalf of \_\_\_\_\_

with Power of Attorney attached

Date (DD/MM/YY) \_\_\_\_\_

\* \* \*





**Schedule of Named Specialist Subcontractors<sup>a</sup>**

<i>Item</i>	<i>Element of work</i>	<i>Approximate value</i>	<i>Name and address of subcontractor</i>	<i>Statement of similar works executed</i>
-------------	------------------------	--------------------------	--	--

---

a. The bidder shall enter in this schedule a list of the specialized works and approximate value of the work for which he proposes to use specialist subcontractors, together with the names and addresses of the proposed subcontractors.

## SECTION 10 -- FORMS

### FORM OF BID SECURITY

#### BANK GUARANTEE

Whereas \_\_\_\_\_ [insert name of Bidder] (hereinafter called "the Bidder")  
has submitted its Bid dated \_\_\_\_\_ [insert date of submission of Bid] for the provision of  
\_\_\_\_\_ [give description of works] (hereinafter called "the Bid")

KNOW ALL PEOPLE by these presents that WE \_\_\_\_\_ [insert name of bank]  
of \_\_\_\_\_ [insert name of country], having our registered office at  
\_\_\_\_\_ [insert address of bank] (hereinafter called "the Bank"), are bound unto  
\_\_\_\_\_ [insert name of Procuring Organisation] (hereinafter called "the Procuring Organisation ")  
in the sum of \_\_\_\_\_ [indicate amount of Bid security] for which payment well and truly to be made to  
the said Procuring Organisation, the Bank binds itself, its successors, and assigns by these presents.

Sealed with the Common Seal of the said Bank this \_\_\_\_\_ day of \_\_\_\_\_

THE CONDITIONS of this obligation are:

1. If the Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Bid Form;  
or
2. If the Bidder, having been notified of the acceptance of its Bid by the Procuring Organisation during the  
period of Bid validity:
  - 2.1 fails or refuses to execute the Contract Form; or
  - 2.2 fails or refuses to furnish the performance security; or
3. If the Bidder fails to correct errors

we undertake to pay to the Procuring Organisation up to the above amount upon receipt of its first written  
demand, without the Procuring Organisation having to substantiate its demand, provided that in its demand the  
Procuring Organisation will note the occurrence of one of the above conditions.

This guarantee will remain in full force and effect up to and including \_\_\_\_\_ [indicate days] days after the period  
of Bid validity.

\_\_\_\_\_  
Signature and Seal of the Bank

**FORM OF PERFORMANCE SECURITY**

To: \_\_\_\_\_ [insert name of Procuring Organisation]

WHEREAS \_\_\_\_\_ [insert name of Contractor] (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. \_\_\_\_\_ [insert reference number of Contract] dated \_\_\_\_\_ to perform \_\_\_\_\_ [give description of works] (hereinafter called "the Contract");

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognised bank for the sum specified therein as security for compliance with its obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of \_\_\_\_\_ [indicate amount of Guarantee] \_\_\_\_\_<sup>1</sup>[indicate amount in words], such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of \_\_\_\_\_ [amount of Guarantee] as aforesaid without you needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

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

\_\_\_\_\_  
Signature and Seal of the Guarantor

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

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

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

\_\_\_\_\_  
<sup>1</sup> An amount is to be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract, and denominated in the currency of the Contract.

**FORM OF SECURITY FOR ADVANCE PAYMENT**

BANK GUARANTEE

Bank: \_\_\_\_\_  
\_\_\_\_\_  
(Name and Identification)

Official Stamp:

To: \_\_\_\_\_ (Name and  
Address of Procuring Organisation)

Title of Contract: \_\_\_\_\_

Guarantee No. \_\_\_\_\_

In accordance with the provisions of the above-mentioned Contract, the \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[name and address of Contractor] (hereinafter called "the Contractor") shall deposit with \_\_\_\_\_ [indicate name of  
Procuring Organisation] a bank Guarantee to guarantee its proper and faithful performance under the said Contract in  
an amount of \_\_\_\_\_ [insert amount of Guarantee]  
\_\_\_\_\_ [insert amount in words].

We, the \_\_\_\_\_ [indicate bank or financial institution], as instructed by the Contractor, agree  
unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the  
Procuring Organisation on your first demand without whatsoever right of objection on our part and without its first  
claim to the Contractor, in the amount not exceeding \_\_\_\_\_ [indicate amount of guarantee in  
figures and words].

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

This guarantee shall become effective on receipt by the Contractor of the advance payment of  
\_\_\_\_\_ [indicate amount in words] and shall remain valid until the Procuring  
Organisation receives full repayment of the same amount from \_\_\_\_\_ [insert  
name of Contractor]

---

Signature and seal of the Guarantors

---

[Name of Bank or Financial Institution]

---

[Address]

---

[Date]

**NOTIFICATION OF AWARD**

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

Bid No: \_\_\_\_\_

The \_\_\_\_\_ [insert name of Procuring Organisation] notifies  
\_\_\_\_\_ [insert name and address of successful Bidder] that the  
Bid presented on \_\_\_\_\_ [insert date] for the provision of  
\_\_\_\_\_ [general description of works] for the total sum of  
\_\_\_\_\_ [indicate amount in words and figures] is accepted. A Contract Form covering this award is  
enclosed.

The Bidder \_\_\_\_\_ [insert name] is asked to present to  
\_\_\_\_\_ [insert name and address of Procuring Organisation]  
before \_\_\_\_\_ [insert date]:

- ◆ The performance security contemplated in the General Conditions of Contract, duly executed;
- ◆ The acknowledgement copy of the Contract Form, properly signed.

\_\_\_\_\_ [Procuring Organisation]

[Name, Signature and Seal]