



GOVERNMENT OF DELTA STATE OF NIGERIA

STANDARD BIDDING DOCUMENT

For the

Procurement of Works

First Edition 2015

Asaba Delta State

Notice to Users

1. This Standard Bidding Document (SBD) has been prepared by the Delta State Public Procurement Commission, for the Procurement of Works and Related Services under National Competitive Bidding (NCB) and State Competitive Bidding (SCB) when financed by the State Budget and to enable a Procuring Entity to select the lowest evaluated responsive Bid. It can also be used for International Competitive Bidding (ICB).
2. This Standard Bidding Document (SBD) is issued in accordance with the Delta State Public Procurement Commission Law, 2008 and the Regulations issued there under, and has been adapted to the needs of Delta State of Nigeria from national and internationally acceptable model formats. The SBDs when properly completed will provide all the information that a Bidder needs in order to prepare and submit a Bid. This should provide a sound basis on which the Procuring Entity can provide equal simultaneous information to bidders, as well as fairly, transparently and accurately carry out a Bid evaluation process on the Bids submitted by the Bidders.
3. This SBD can be used when prequalification has been or has not been used. In the case of prequalification, for which the Standard Prequalification Document applies, this SBD may have to be adjusted to include the prequalification results.
4. This SBD is intended as a model for all measurement (unit prices or unit rates in a bill of quantities), which are the most common in Works contracting.
5. The following guidelines apply for the Procuring Entity when using this SBD:
 - (a) check the relevance of the provisions of the SBD against the requirements of the specific Works to be procured;
 - (b) tailor the document to the circumstances of the particular Project. The Procuring Entity should only introduce such adjustments in the Sections of the SBD which are specifically designed for this purpose: Section 2: the Special Instructions to Bidders (SIB); Section 4: the Special Conditions of Contract (SCC); Section 6: the Bill of Quantities (BoQ); Section 7; General Specifications; Section 8: Particular Specifications, and Section 9: Drawings. Those details not filled by the Procuring Entity are the responsibility of the Bidder;
 - (c) but *never* change the Instructions to Bidders and the General Conditions of Contract;
 - (c) provide the specific information needed in the italicized notes inside brackets and the boxes with single borders. These notes should also specify where the Bidder should provide information. **Most footnotes and boxes are solely prepared for the use of the Procuring Entity and are not part of the final SBD to be issued. In other words, they should be removed from the final version;**
 - (e) retain the other notes which specify that they are guidance to the Bidders.
 - (d) indicate the name of the project, the contract number, the name of the Procuring Entity and the date of issue on the cover of the document;

6. The Standard Bidding Document for the Procurement of Works has the following contents:

- IFT Invitation To Bid (ITB):** This is a repeat of the ITB which was published in the media and on the website of the Procuring Entity announcing the Bid and providing the essential information to prospective Bidders to invite them to participate. It is reprinted here for reference purposes only
- Section 1 Instructions to Bidders (ITB):** The ITB are standard instructions which guide the Bidders on how to prepare their Bids. Standard instructions mean that they cannot be modified by the Procuring Entity. The ITB is based on the Delta State Public Procurement Commission Law, 2008 and the Regulations issued thereof, from which the procedures for Bid submission, opening, evaluation and Contract award have been derived. They clarify the general evaluation criteria for the selection of the lowest evaluated responsive Bid and describe the basic qualifications of the Bidder needed for contract execution. This Section cannot be changed under any circumstances.
- Section 2 Special Instructions to Bidders (SIB).** In this Section the Procuring Entity supplements or adapts the relevant clauses of the ITB to the specific Bid information or project requirements where needed (name of the Procuring Entity, Bid submission date, specific evaluation criteria, amount of Bid security, Bid validity period, whether alternative Bids are permitted or not, fixed price contract or contract subject to price adjustment, works completion date, whether domestic preference applies or not, level of performance security to be provided at contract signature and advance payment guarantee, etc). Modifications to the Instructions to Bidders cannot change the Law or the Regulations.
- Section 3 General Conditions of Contract (GCC).** The GCC defines the conditions of contract for Works in Delta State based on the Procurement Law and the Regulations for Goods and Works. Like the ITB, the GCC cannot be modified or adapted by the Procuring Entity except through the Special Conditions of Contract.
- Section 4 Special Conditions of Contract (SCC).** The SCC supplements or adapts the relevant clauses of the GCC to the specific requirements of the contract (in particular with respect to the starting date, description of the Works, insurance requirements, percentage of advance payment, payment schedule, price adjustment formula, subcontracting provisions, relationship with the supervising engineer, percentage of retention money and/or performance guarantee (security), liquidated damages, bonus and penalty provisions, arbitration rules, etc.).
- Section 5 Standard Bid and Contract Forms:** This Section provides the standard format for the **Bid Submission Sheet, (Form W-1), Bid Information Sheet (Form W-2) and Bid Security (Form W-3)** to be submitted by the Bidder.
- This Section also contains the form of the **Notification of Award (Form W-4)** and the **Contract Agreement (Form W-5)** which, when completed, incorporates any corrections or modifications to the accepted Bid relating to amendments permitted by the Instructions to Bidders, the General Conditions of Contract (GCC), and the Special Conditions of Contract (SCC).

The forms for **Performance Security (Form W-6)** and **Advance Payment Security (Form W-7)** (when required) are to be completed by the successful Bidder after Contract award and these forms must be submitted by the successful Bidder as a condition of contract signature.

Section 6 **Bill of Quantities:** Itemizes the estimated quantities and different types of Works and may include a daywork schedule for unforeseen work outside the Bill of Quantities. The Procuring Entity must prepare this section most carefully as it has a direct bearing on the cost of the Bids and the implementation performance.

Section 7 **General Specifications:** describe the Works and Related Services to be procured. These are a prerequisite for Bidders to respond realistically and competitively to the requirements of the Procuring Entity. They must present a clear statement of the required standards of workmanship, materials, goods and related services, in order to achieve the principles of sound public procurement (efficiency, economy, fairness and transparency) and it is essential for the Bidder to provide this information with great diligence if it wants to succeed in a fair evaluation.

Section 8 **Particular Specifications:** This Section provides further details on special requirements for the Works and modifies or clarifies any General Technical Specifications.

Section 8 **Drawings:** This Section contains any drawings that supplement the specifications.

GOVERNMENT OF DELTASTATE OF NIGERIA

[enter here the name of the procuring entity]

S T A N D A R D B I D D O C U M E N T

FOR THE PROCUREMENT OF WORKS

*[enter here the nature of the works and related services to be
procured]*

Name of Procuring Entity

Invitation To Bid No:

Issued on:

Bid Package No:

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[Note: The Invitation To Bid that follows on the next page is the standard format as it should appear on the website. The procuring entity should ensure that a hard copy of the Invitation for Bids as actually published is included in the issued Bid Document.]

Invitation for Bids

(Here follows a copy of the advertisement as published in the media and the procurement journal)

Section 1. Instructions to Bidders

A. General

- 1. Scope of Bid**
 - 1.1 The Employer, as indicated in the Special Instructions to Bidders (SIB), issues this Bid Document for the procurement of Works and Related Services incidental thereto as specified in the SIB and as detailed in Section 6: Bill of Quantities. The name of the Bid and the number and identification of its constituent lot(s) are stated in the SIB.
 - 1.2 The successful Bidder will be required to complete the Works by the Intended Completion Date specified in the Special Conditions of Contract (SCC).
 - 1.3 Throughout this Bid Document:
 - (a) the term “in writing” means communicated in written form with proof of receipt;
 - (b) if the context so requires, singular means plural and vice versa; and
 - (c) “day” means calendar day.
 - (d) “He” means both He and She
- 2. Source of Funds**
 - 2.1 The Employer has been allocated public funds as indicated in the SIB and intends to apply a portion of the funds to eligible payments under the Contract for which this Bid Document is issued.
 - 2.2 For the purpose of this provision, “public funds” means any money appropriated to procuring entities under Government budget, or revenues generated by statutory bodies and corporations, or aid grants and credits put at the disposal of procuring entities by the development partners through the Government.
 - 2.3 Payments by the development partner, if so indicated in the SIB, will be made only at the request of the Government and upon approval by the development partner in accordance with the applicable Loan / Credit / Grant Agreement, and will be subject in all respects to the terms and conditions of that Agreement.
- 3. Corrupt, Fraudulent, Collusive, Coercive or Obstructive Practices**
 - 3.1 The Delta State Public Procurement Commission Law, 2008, pursuant to which these SBDs are issued, requires that all parties involved in public procurement, including Procuring Entities, Bidders, Suppliers, Contractors, Consultants, and Observers, observe the highest standard of ethics during the procurement, execution and monitoring of contracts under public funds. In pursuance of this policy, no Bidder or Procurement Official shall engage in any:
 - (a) Corrupt practice, which means the offering, giving, receiving, or

soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution;

- (b) Fraudulent practice, which means a misrepresentation or omission of facts, in order to influence a procurement process or contract execution to the detriment of the employer;
- (c) Collusive practices, which means a scheme or an arrangement between two or more Bidders with or without the knowledge of the employer, including non-disclosure of dominating, subsidiary or similar relationships, designed to establish bid prices at artificial, non-competitive levels or to wrongfully obtain a procurement contract, thereby depriving the employer or another bidder of the benefits of free and open competition;
- (d) Coercive practice, which means harming or threatening to harm, directly or indirectly, persons, their family, or their property in order to influence their participation in a procurement process, or affect the execution of a contract.
- (e) Misconduct which means, Breaches of codes of conduct of contractors and suppliers and related mandatory provisions of the Delta State Public Procurement law 2008, Delta State Public Procurement Regulations and Standard Bidding Documents.
- (f) Obstructive practice which means
 - i. Deliberately destroying, falsifying, altering or concealing of evidence material to an enquiry/investigation or making false statements to investigators in order to materially impede the Commission, the Council and or relevant authorities' enquiry and or investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - ii. Acts intended to materially impede the exercise of the Commission and or relevant authorities' inspection, investigation and audit rights provided for under par. 3.2 (iii) below.

3.2 Should (a) an Employer establish the use of corrupt, fraudulent, collusive or coercive practices of any kind in the procurement process, or (b) the Delta State Public Procurement Commission (DSPPC) establish same during prior review or post review of procurement procedures or procurement audits, the Employer shall immediately refer the matter to the Commission, or the

Commission shall promptly take up the matter, and will, upon substantiated evidence,

- (i) Exclude the Bidder from further proceeding in the procurement of the contract or reject a proposal for contract award, and or
- (ii) Take disciplinary measures and sanctions including where appropriate filing reports with criminal investigation agencies against the individual or firm, declaring it ineligible,(either indefinitely or for a stated number of years), to be awarded public financed contracts.
- (iii) Require bidders, suppliers and contractors to permit the relevant authorities to inspect their premises, accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Commission.

3.3 The Bidder has responsibility to be aware of the provisions on fraud and corruption stated in GCC Clause 3 and GCC Sub-Clause 78.1(b.vi).

3.4 The Government requires that the Employer's personnel have an equal obligation not to solicit, ask for and/or use coercive methods to obtain personal benefits in connection with the said proceedings.

4. Eligible Bidders

4.1 This Invitation for Bids is open to eligible Bidders from [all countries], [except for any specified in the SIB]. In order to be eligible for public procurement, Bidders must

- (a) Have the necessary professional and technical qualifications, managerial competence, bonafide reputation, financial viability, equipment and other physical facilities, including after sale service where appropriate, and qualified personnel to perform the contract as requested as per ITB Clause 11 to 15;
- (b) Possess the legal capacity to enter the procurement contract;
- (c) Not be in receivership, or being insolvent, bankrupt or being wound-up, being suspended, or be the subject of any proceedings of the foregoing;
- (d) Have paid due taxes, made due pension and social security contributions;
- (e) Not have any directors who have been convicted in any country for criminal offence related to fraudulent or corruptive practices, or criminal misrepresentation or falsification of facts relating to any

matter;

- (f) Not be declared ineligible for public financed contracts subject to ITB Sub-Clause 3.2 above.

- 4.2 A Bidder may be a physical or juridical individual or body of individuals, or company, association or any combination of them under agreement in the form of an intended or existing joint venture, (JV), invited to take part in public procurement or seeking to be so invited or submitting a Bid in response to an Invitation for Bids. All members of the JV shall be jointly and severally liable to the Employer. A JV is distinct from the Contractor Subcontractor arrangement where the entire responsibility for contract execution rests with the Contractor.
- 4.3 A Government-owned enterprise/company in Nigeria may also participate in the Bid, if it is legally and financially autonomous, operates under commercial law, and is not a dependent agency of the Employer or another procuring entity or government.
- 4.4 The Bidder shall provide in Section 5: Bid and Contract Forms, a statement that the Bidder (including all members of a JVA) is not associated, nor has been associated in the past, directly or indirectly, with a consultant or any other entity that has prepared the design, specifications and other documents for this Invitation for Bids.
- 4.5 A Bidder who failed to perform a contract during the period stipulated as per ITB 12.3 or with pending litigation which may have a substantial impact on the Bidder's net worth as per ITB 12.3 shall not be eligible for contract award.)
- 4.6 A Bidder who fails to file a statement disclosing its dominating or subsidiary relationship with another company also participating in the same bidding process shall be disqualified.

5. Eligible Materials, Equipment and Services

- 5.1 All materials, equipment and services to be supplied under the Contract are eligible, unless their origin is from a country specified in the SIB.
- 5.2 For purposes of this clause, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, or the place from which the related services are supplied.
- 5.3 The origin of materials and equipment and services may be distinct from the nationality of the Bidder.

- 6. Site Visit**
- 6.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site and obtain all information that may be necessary for preparing the Bid and entering into a Contract for performance of the Works.
- 6.2 The Bidder should ensure that the Employer is informed of the visit in adequate time to allow it to make appropriate arrangements.
- 6.3 The costs of visiting the Site shall be at the Bidder's own expense

B. Bid Document

- 7. Bid Document Sections**
- 7.1. The Sections comprising the Bid Document are listed below, and should be read in conjunction with any Amendment issued in accordance with ITB Clause 10.
- Section 1 Instructions to Bidders (ITB)
 - Section 2 Special Instructions to Bidders (SIB)
 - Section 3 General Conditions of Contract (GCC)
 - Section 4 Special Conditions of Contract (SCC)
 - Section 5 Bid and Contract Forms
 - Section 6 Bill of Quantities (BOQ)
 - Section 7 General Specifications
 - Section 8 Particular Specifications
 - Section 9 Drawings
- 7.2. The Employer will reject any Bid submission if the Bid Document was not purchased directly from the Employer, or through its agent as stated in the SIB.
- 7.3. The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bid Document as well as in Bid Amendments, if any. Failure to furnish all information or documentation required by the Bid Document may result in the rejection of the Bid.
- 8. Clarifications**
- 8.1 The Employer will respond in writing to any request by Bidders for clarification of the Bid Document provided it is received in writing at the Employer's address indicated in the SIB at least 10 days before the Bid submission deadline.
- 8.2 The Employer shall forward by email or other means copies of its response to all those who have purchased the Bid Document, including a description of the enquiry but without identifying its source.
- 8.3 Should the Employer deem it necessary to amend the Bid Document as a result of a clarification, it shall do so following the procedure under ITB Clause 10 and ITB Sub-Clause 33.3.

- 9. Pre-Bid Meeting**
- 9.1 To clarify issues and to answer questions on any matter arising in the Bid Document, the Employer may, if stated in the SIB, invite prospective Bidders to attend a Pre-Bid Meeting at the place, date and time as specified in the SIB. Bidders are encouraged to attend the meeting, if it is held.
 - 9.2 The Bidder is requested to submit any questions in writing so as to reach the Employer not later than five (5) working days prior to the date of the meeting.
 - 9.3 Minutes of the pre-Bid meeting, including the text of the questions raised prior to, during the meeting and the responses given, together with any responses prepared after the meeting, shall be transmitted to all those who purchased the Bid document not later than seven (7) days from the date of the meeting . Any modification to the Bid document listed in ITB Sub-Clause 7.1 that may become necessary as a result of the pre-Bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB Clause 10 and not through the minutes of the pre-Bid meeting.
 - 9.4 Non-attendance at the pre-Bid meeting will not be a cause for disqualification of a Bidder

10. Amendments

- 10.1 At any time prior to the deadline for submission of Bids, the Employer, for any reason, on its own initiative or in response to a clarification request in writing from a Bidder, having purchased the Bid Document, may amend the Bid Document by issuing an amendment.
- 10.2 Any amendment issued shall become an integral part of the Bid Document and shall be communicated in writing to all those who have purchased the Bid Document as per ITB7.2.
- 10.3 To give a prospective Bidder reasonable time in which to take an amendment into account in preparing its Bid, the Employer may, at its discretion, extend the deadline for the submission of Bids, pursuant to ITB Sub-Clause 33.3. In the event that an amendment is issued with a period of only one third or less of the Bidding period remaining, then the deadline for the submission of Bids will be extended by the Employer.

C. Evaluation and Qualification Criteria

11. Experience Criteria

- 11.1 To qualify for a multiple number of lots in a package for which Bids are invited in the Invitation for Bids, the Bidder shall demonstrate having resources and experience sufficient to meet the aggregate of the qualifying criteria for the individual lots.
- 11.2 The Bidder shall have the following minimum level of construction

experience to qualify for the performance of the Works under the Contract:

- (a) A minimum number of years of general experience in the construction of works as specified in the SIB; and
- (b) Specific experience as a prime Contractor or Subcontractor in the construction of at least the number of completed Contracts stated in the SIB of a nature, complexity and construction technology similar to the proposed Works over the period stated in the SIB (to comply with this requirement, works sited should be at least 80 percent complete and not overdue or delayed by the contractor)

12. Financial Criteria

- 12.1 The Bidder shall have the following minimum level of financial capacity to qualify for the performance of the Works under the Contract.
 - (a) The average annual construction turnover as specified in the SIB during the period specified in the SIB; and
 - (b) The minimum Bid capacity as specified in the SIB.
- 12.2 The Bidder shall submit satisfactory bank references and documents demonstrating availability of funds/liquid assets and/or credit facilities from its banker(s) to successfully complete the Contract, as specified in the SIB.
- 12.3 The Bidder shall provide a statement (i) to the effect that it does not have a contract not performed during the period preceding the deadline for Bid submission as specified in the SIB, and (ii) indicating all pending litigation which should not represent more than the percentage of the Bidder's net worth as specified in the SIB.

13. Personnel Capacity

- 13.1 The Bidder shall have the following minimum level of personnel capacity to qualify for the performance of the Works under the Contract:
 - (a) A Construction Project Manager with qualifications and experience as specified in the SIB;
 - (b) The minimum number of Engineers with qualifications and experience as specified in the SIB; and
 - (c) Other key staff with qualifications and experience as specified in the SIB.

14. Equipment Capacity

- 14.1 The Bidder shall own or have assured access through lease, hire, or other such method, of the essential equipment, in full working order, as specified in the SIB.

15. Joint Venture, Consortium or Association (JV)

- 15.1 The requirements of ITB 11.2(a), 12.2 and 12.3 must be met by all partners of a JV. The requirements of ITB 11.2(b), 13.1 and 14.1 must be met by the partners of a JV in aggregate. The figures for each of the partners of a JV shall be added together to determine the Bidder's compliance with the minimum qualifying criteria for ITB11.2(b) and 12.1; however, for a JV to qualify, each of its partners must meet at least twenty-five (25) percent of

minimum criteria for an individual Bidder, and the partner in charge at least forty (40) percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the JV's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria.

D. Bid Preparation

- 16. Only one Bid** 16.1 A Bidder shall submit only one (1) Bid for each lot, either individually or as a partner in a JV. A Bidder who submits or participates in more than one (1) Bid will cause all the Bids with that Bidder's participation to be rejected. However this does not limit the inclusion of the same subcontractor in more than one Bid. .
- 17. Preparation Costs** 17.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding process.
- 18. Language** 18.1 The Bid, as well as all correspondence and documents relating to the Bid shall be written in the English language. [Supporting documents and printed literature furnished by the Bidder that are part of the Bid may be in another language, provided they are accompanied by an accurate translation of the relevant passages in the English language, in which case, for purposes of interpretation of the Bid, such translation shall govern.]
- 18.2 The Bidder shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.
- 19. Contents of the Bid** 19.1 The Bid prepared by the Bidder shall comprise the following:
- (a) The Bid Submission Sheet (Form W-1);
 - (b) The priced Bill of Quantities for each lot in accordance with ITB Clauses 20 and 22 and 23;
 - (c) Bid Security in accordance with ITB Clause 30;
 - (d) Alternative Bids, if permissible, in accordance with ITB Clause 21;
 - (e) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB Clause 31.2;
 - (f) Documentary evidence in accordance with ITB Clause 24 establishing the Bidder's eligibility to Bid, including the Bidder Information Sheet (Form W-2);
 - (g) Documentary evidence in accordance with ITB Clause 27 establishing the Bidder's qualifications to perform the Contract, if its Bid is accepted;
 - (h) Description of work method and schedule in accordance with ITB Clause 26; and

- (i) Any other document as specified in the SIB.

20. Bid Submission Sheet and Bill of Quantities

- 20.1 The Bidder shall submit the Bid Submission Sheet (Form W-1) furnished in Section 5: Bid and Contract Forms. This document shall be completed without any alterations to its format, filling in all blank spaces with the information requested, failing which the Bid may be rejected as being incomplete.
- 20.2 The Bidder shall submit the priced Bill of Quantities using the form furnished in Section 6: Bill of Quantities. If in preparing its Bid, the Bidder has made errors in the unit price or the total price, and wishes to correct such errors prior to submission of its Bid, it may do so, but shall ensure that each correction is suitably initialled by the authorised person of the Bidder and that a statement shall be made as to the total number of corrections made, at the end of the priced Bill of Quantities.

21. Alternative Bids

- 21.1 Unless otherwise stated in the SIB, alternative Bids shall not be considered.
- 21.2 If so allowed in the Special Instructions to Bidders, Bidders wishing to offer technical alternatives to the requirements of the Bid Documents must also submit a Bid that complies with the requirements of the Bid Documents, including the basic technical design as indicated in the drawings and specifications. In addition to submitting the basic Bid, the Bidder shall provide all information necessary for a complete evaluation of the alternative(s) by the Employer, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bid conforming to the basic technical requirements shall be considered by the Employer.
- 21.3 When alternative times for completion are explicitly invited, a statement to that effect will be included in the SIB, as will the method of evaluating different times for completion.

22. Bid Prices and Discounts

- 22.1 The prices and discounts quoted by the Bidder in the Bid Submission Sheet (Form W1) and in the Bill of Quantities shall conform to the requirements specified below.
- 22.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities (BOQ). Items listed in the BOQ/BEME against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the BOQ.
- 22.3 The price to be quoted in the Bid Submission Sheet, in accordance with ITB Sub-Clause 20.1, shall be the total price of the Bid, excluding any discounts offered.

- 22.4 The Bidder shall quote any unconditional discounts and the methodology for their application in the Bid Submission Sheet, in accordance with ITB Clause 20.1.
- 22.5 If so provided for in the SIB and the SCC, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of GCC Clause 66. The Bidder shall furnish the indices and weightings for the price adjustment formulae in the SCC. The Employer may require the Bidder to justify its proposed indices and weightings.
- 22.6 If so indicated in the SIB, Bids are being invited for individual lots or for any combination of lots. Bidders wishing to offer any price reduction for the award of more than one lot, shall specify in their Bid the price reductions applicable to each lot, or alternatively, to any combination of lots within the package. Price reductions or discounts will be considered in the Bid evaluation, provided the Bids for all lots are submitted and opened at the same time.
- 22.7 All duties, taxes and other levies payable by the Contractor under the Contract, or for any other causes, as of the date twenty-eight (28) days prior to the deadline for submission of Bids, shall be included in the rates and prices and the total Bid Price submitted by the Bidder.

23. Bid Currency

- 23.1 All prices shall be quoted in Nigeria Naira.

24. Documents Establishing Eligibility of the Bidder

- 24.1 The Bidder shall submit documentary evidence to establish its eligibility in accordance with ITB Clause 4, and in particular, shall:
- (a) Complete the eligibility declarations in the Bid Submission Sheet (Form W-1), included in Section 5, Bid and Contract Forms; and
 - (b) If in accordance with ITB Sub-Clause 4.2, the Bidder is an existing or intended JV, it must submit the Bidder Information Sheet (Form W-2) and a copy of the JV Agreement or MOU, or a letter of intent to enter into such an agreement. The respective document shall be signed by all legally authorised signatories of all the parties to the existing or intended JV, as appropriate.

25. Documents Establishing the Eligibility and Conformity of Materials, Equipment and Services

- 25.1 The Bidder shall submit documentary evidence to establish the origin of all materials, equipment and services to be supplied under the Contract in accordance with ITB Clause 5.
- 25.2 To establish the conformity of the materials, equipment and services to be supplied under the Contract, the Bidder shall furnish, as part of its Bid, the documentary evidence (which may be in the form of literature, drawings or data) that these conform to the technical specifications and standards specified in Section 7, General Specifications and Section 8, Particular Specifications.

- 26. Documents Establishing the Conformity of the Technical Specification**
- 26.1 The Bidder shall furnish a Technical Specification including a statement of work methods and schedule and any other information as stipulated in the SIB, in sufficient detail to demonstrate the adequacy for the Bidders' submission to meet the work requirements and the completion time.
- 27. Documents Establishing the Bidder's Qualifications**
- 27.1 Bidders shall submit documentary evidence to meet the qualification criteria specified in Sub-Section C, Qualification Criteria of the ITB.
- 27.2 Bidders shall submit the Bidder Information Sheet (Form W-2) furnished in Section 5: Bid and Contract Forms
- 27.3 Bidders shall include the following information and documents with their Bids:
- (a) Total monetary value of construction work performed for each of the last five (5) years;
 - (b) Experience in works of a similar nature and size for each of, and details of work under way or contractually committed and clients who may be contacted for further information on those contracts;
 - (c) Major items of construction equipment proposed to carry out the contract;
 - (d) Qualification and experience of key site management and technical personnel proposed for the contract;
 - (e) Reports on the financial standing of the Bidder, such as profit and loss statements and corresponding auditor's reports for the period stipulated in SIB ;
 - (f) financial reports, bank statements or balance sheets or profit and loss statements or auditor's reports or bank references with documents or a combination of these demonstrating the availability of liquid assets to successfully complete the contract;
 - (g) authority to seek references from the Bidder's bankers; and
 - (h) Information on pending litigation in which the Bidder has been involved or in which the Bidder is currently involved.
 - (i)
- 27.4 Bids submitted by a JV shall comply with the following requirements, and any other requirements as specified in the SIB:
- (a) The Bidder shall include all the information listed in ITB Sub-Clause 27.1 and 27.3 for each JV partner;
 - (b) The Bid shall be signed so as to be legally binding on all partners;
 - (c) All partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

- (d) One of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
- (e) The execution of the entire Contract, including payment, shall be done exclusively with the partner in charge

28. Bid Disqualification

- 28.1 The Employer shall disqualify a Bidder who submits a document containing false information for purposes of qualification or misleads or makes false representations in proving its qualification requirements. If such an occurrence is proven, the Employer may declare such a Bidder ineligible, either indefinitely or for a stated period of time, from participation in future procurement proceedings
- 28.2 The Employer may disqualify a Bidder who has record of poor performance such as abandoning the works, not properly completing the Contract, inordinate delays, litigation history or financial failures.

29. Bid Validity

- 29.1 Bids shall remain valid for the period specified in the SIB after the date of Bid submission prescribed by the Employer, pursuant to ITB Clause 33. A Bid valid for a shorter period shall be rejected by the Employer as non-responsive.
- 29.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may solicit the Bidders consent to an extension of the period of validity of their Bids. The request and the responses shall be made in writing. The Bid Security provided under ITB Clause 30 shall also be suitably extended promptly. If a Bidder does not respond or refuses the request, it shall not forfeit its Bid Security, but its Bid shall no longer be considered in the evaluation proceedings. A Bidder agreeing to the request will not be required or permitted to modify its Bid.

30 Bid Security

- 30.1 The Bidder shall furnish as part of its Bid, a Bid Security in original form (Form W-3) and in the amount specified in the SIB.
- 30.2 The Bid Security shall:
 - (a) At the Bidder's option, be either;
 - (i) In the form of a bank draft or pay order, or
 - (ii) In the form of an unconditional bank guarantee (Form W-3) issued by a commercial Bank in Nigeria , in the format furnished in Section 5: Bid and Contract Forms;
 - (b) Be payable promptly upon written demand by the Employer in the case of the conditions listed in ITB Sub-Clause 30.5 being invoked; and
 - (c) Remain valid for a period of twenty eight (28) days beyond the original validity period of Bids, or beyond any period of extension subsequently requested under ITB Sub-Clause 29.2.

- 30.3 A Bid not accompanied by a valid Bid Security in accordance with ITB Sub-Clause 30.2 shall be rejected by the Employer as non-responsive.
- 30.4 Unsuccessful Bidders' Bid Security will be discharged or returned within twenty eight (28) days of the end of the Bid validity period specified in ITB Sub-Clause 29.1 and 29.2 The Bid Security of the successful Bidder will be discharged upon the Bidder's furnishing of the Performance Security pursuant to ITB Clause 53 and signing the Contract Agreement.
- 30.5 The Bid Security may be forfeited:
- (a) If a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in ITB Sub-Clause 29.2; or
 - (b) If the successful Bidder fails to:
 - (i) Accept the correction of its Bid Price pursuant to ITB Sub-Clause 42.2; or
 - (ii) Furnish a Performance Security in accordance with ITB Clause 53; or
 - (iii) Sign the Contract in accordance with ITB Clause 54.
- 30.6 The Bid Security of a JV shall be in the name of the JV that submits the Bid. If the JV has not been legally constituted at the time of Bidding, the Bid Security shall be in the name of all intended JV partners as named in the letter of intent mentioned in ITB Sub-Clause 24.1

31. Bid Format and Signing

- 31.1 The Bidder shall prepare one (1) original of the documents comprising the Bid as described in ITB Sub-Clause 19.1 and clearly mark it "ORIGINAL." Alternative Bids, if permitted in accordance with ITB 21, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall prepare the number of copies of the Bid, as specified in the SIB and clearly mark each of them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail
- 31.2 The original and each copy of the Bid shall be typed or written in indelible ink and shall be signed by the person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written authorization and shall be attached to the Bidder Information Sheet (Form W-2). The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the original and of each copy of the Bid, except for

un-amended printed literature, shall be numbered sequentially and signed or initialled by the person signing the Bid.

- 31.3 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person(s) signing the Bid

E. Bid Submission

32. Bid Sealing and Marking

- 32.1 The Bidder shall enclose the original in one (1) sealed envelope and all the copies of the Bid in another sealed envelope, duly marking the envelopes as “ORIGINAL” and “COPY.” These two (2) envelopes shall then be enclosed in one (1) single outer sealed envelope.
- 32.2 The inner and outer envelopes shall:
- (a) Bear the name and address of the Bidder;
 - (b) Be addressed to the Employer at the address specified in the SIB;
 - (c) Bear the name of the Bid and the Bid/Lot Number as specified in the SIB; and
 - (d) Bear a statement “DO NOT OPEN BEFORE.....” The time and date for Bid opening as specified in the SIB.
- 32.3 If all envelopes are not sealed and marked as required by ITB Sub-Clauses 32.1 and 32.2, the Employer will assume no responsibility for the misplacement or premature opening of the Bid

33. Submission Deadline

- 33.1 Bids must be received by the Employer at the address specified in no later than the date and time specified in the SIB.
- 33.2 The Bid may be hand delivered, posted by registered mail or sent by courier. The Employer shall, on request, provide the Bidder with a receipt showing the date and time when its Bid was received.
- 33.3 The Employer may, at its discretion, extend the deadline for the submission of Bids by amending the Bid Document in accordance with ITB Clause 10, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the new deadline as extended.

34. Late Bids

- 34.1 Any Bid received by the Employer after the deadline for submission of Bids in accordance with ITB Clause 33 shall be declared late, will be rejected, and returned unopened to the Bidder.

35. Modification, Substitution or

- 35.1 A Bidder may modify, substitute or withdraw its Bid after it has been submitted by sending a written notice, duly signed by the same authorized representative,

Withdrawal

and shall include a copy of the authorization in accordance with ITB Sub-Clause 31.2, (except that no copies of the withdrawal notice are required). However substitution or modification of the Bids, must be accompanied by the respective written notices. The written notice must be:

- (a) Submitted in accordance with ITB Clauses 31 and 32 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “MODIFICATION”, “SUBSTITUTION”, OR “WITHDRAWAL”; and
 - (b) Received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB Clause 33.
- 35.2 Bids requested to be withdrawn in accordance with ITB Sub-Clause 35.1 shall be returned unopened to the Bidders, only after the Bid opening.
- 35.3 No Bid may be modified, substituted, or withdrawn after the deadline for submission of Bids specified in ITB Clause 33.
- 35.4 Bidders may only offer discounts to, or otherwise modify the prices of their Bids by including Bid modifications in the original Bid submission, or by submitting Bid modifications in accordance with ITB Sub-Clause 35.1.

F. Bid Opening and Evaluation

36. Bid Opening

- 36.1 The Employer shall open the Bids in public, including modifications or substitutions made pursuant to ITB Clause 35, at the time, on the date, and only at the one place specified in the SIB. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 35 shall not be opened. Bidders or their authorised representatives shall be allowed to attend and witness the opening of Bids, and shall sign a register evidencing their attendance.
- 36.2 The name of the Bidder, Bid modifications, substitutions or withdrawals, total amount of each Bid, number of corrections, discounts, and the presence or absence of requisite Bid Security, any alternatives, if so permitted, and such other details as the Employer, at its discretion, may consider appropriate, shall be read out aloud and recorded. Only discounts and alternative offers read out at the Bid opening shall be considered for evaluation. Appropriate pages of the original Bid, except for un-amended printed literature, will be initialled by a minimum of three (3) members of the Employer’s Bid Opening Committee as set up by the Head of the Procurement Department/Unit.
- 36.3 Minutes of the Bid opening¹ shall be made by the Employer and furnished to any Bidder upon receipt of a written request. The minutes shall include, as a minimum: the name of the Bidder and whether there is a withdrawal,

¹ A copy of the Minutes, signed by the Chairperson of the Bid Opening Session, should be sent to the Delta State Public Procurement Commission for contracts that are subject to prior review.

substitution, or modification; the Bid Price, per lot if applicable, including any discounts and alternative offers; and the presence or absence of a Bid Security, and such other documents if and when required.

36.4 Bids not opened and read out at the Bid opening shall not be considered, irrespective of the circumstances, and shall be returned unopened to the Bidder.

36.5 No Bid shall be rejected at the Bid opening, except for late Bids, which shall be returned unopened to the Bidder pursuant to ITB Clause 34.

37. Confidentiality

37.1 After the opening of Bids, information relating to the examination, clarification, and evaluation of Bids and recommendations for award shall not be disclosed to Bidders or other persons not officially concerned with the evaluation process until after the award of the Contract is announced.

38. Clarification

38.1 The Employer may ask Bidders for clarification of their Bids in order to facilitate the examination and evaluation of Bids. The request for clarification and the response shall be in writing, and any changes in the prices or substance of the Bid shall not be sought, offered or permitted, except to confirm the correction of arithmetical errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB Clause 42.

**39. Bidder
Contacting the
Employer**

39.1 Following the opening of the Bids and until the Contract is signed no Bidder shall make any unsolicited communication to the Employer or try in any way to influence the Employer's examination and evaluation of the Bids.

39.2 Any effort by a Bidder to influence the Employer in its decisions on the examination, evaluation, comparison, and post-qualification of the Bids or Contract award may result in the rejection of its Bid.

39.3 Notwithstanding ITB Sub-Clause 39.1, from the time of Bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the Bidding process, it should do so in writing.

40. Bid Responsiveness

40.1 The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself without recourse to extrinsic evidence.

- 40.2 A substantially responsive Bid is one that conforms in all respects to the requirements of the Bid Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- (a) Affects in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
 - (b) Limits in any substantial way, or is inconsistent with the Bid Document, the Employer's rights or the Bidder's obligations under the Contract; or
 - (c) If rectified would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.
- 40.3 If a Bid is not substantially responsive to the Bid Document, it shall be rejected by the Employer and shall not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.
- 40.4 There shall be no requirement as to the minimum number of responsive Bids.

**41. Non-conformities
Errors, and
Omissions**

- 41.1 The Employer may regard a Bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirement set forth in the Bid Document or if it contains errors or oversights that are capable of being corrected without affecting the substance of the Bid.
- 41.2 Provided that a Bid is valid and substantially responsive, the Employer may request that the Bidder submits the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Bid related to documentation requirements. Such omission shall not be related to any aspect of the rates of the Bid reflected in the Priced Bill of Quantities. Failure by the Bidder to comply with the request may result in the rejection of its Bid.

**42. Correction of
Arithmetical
Errors**

- 42.1 Provided that the Bid is valid and substantially responsive, the Employer shall correct arithmetical errors on the following basis:
- (a) if there is a discrepancy between the unit price and the line item total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the line item total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
 - (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected;

and

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

42.2 Any arithmetical error or other discrepancies as stated in ITB Sub-Clause 42.1 shall be immediately notified to the concerned Bidder.

42.3 Any Bidder that does not accept the correction of errors, as determined by the application of ITB Sub-Clause 42.1, shall be disqualified and its Bid Security may be forfeited.

43. Preliminary Examination

43.1 The Employer shall firstly examine the Bids to confirm that all documentation requested in ITB Clause 19 have been provided, and to determine the completeness of each document submitted.

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

- (a) Bid Submission Sheet, in accordance with ITB Sub-Clause 20.1;
- (b) Priced Bill of Quantities, in accordance with ITB Sub-Clause 20.2;
- (c) Written confirmation of authorization to commit the Bidder, in accordance with ITB Sub-Clause 31.2; and
- (d) Bid Security, in accordance with ITB Clause 30, if applicable.
- (e) Any other qualifying documentation if any is required

44. Technical Evaluation

44.1 Next, the Employer shall examine the Bid to confirm that all terms and conditions specified in the GCC and the SCC have been accepted by the Bidder without any material deviation or reservation.

44.2 The Employer shall evaluate the technical aspects of the Bid submitted in accordance with ITB Clauses 25 and 26, to confirm that all requirements specified in Section 7: General Specifications and Section 8: Particular Specifications of the Bid Document have been met without any material deviation or reservation.

44.3 If, after the examination of the terms and conditions and the technical aspects of the Bid, the Employer determines that the Bid is not substantially responsive in accordance with ITB Sub-Clause 40.2, it shall reject the Bid.

45. Financial Evaluation

45.1 Next, the Employer shall evaluate the financial offer of each Bid that has been determined substantially responsive up to this stage of the evaluation.

- 45.2 To evaluate a Bid financially, the Employer shall consider the following:
- (a) The Bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities, but including Daywork, where priced competitively;
 - (b) Price adjustment for correction of arithmetical errors pursuant to ITB Sub-Clause 41.1;
 - (c) Appropriate adjustments in order to take into consideration discounts or other price modifications offered pursuant to ITB Sub-Clause 22.4;
 - (d) Appropriate adjustments for any other acceptable variations or deviations pursuant to ITB Sub-Clause 41.1; and
 - (e) Application of all the evaluation factors indicated in Section C of the SIB.
- 45.3 Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the Bid Document or otherwise result in unsolicited benefits for the Employer will not be taken into account in Bid evaluation.
- 45.4 The estimated effect of any price adjustment provisions under GCC Clause 66, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation.
- 45.5 If so indicated in the SIB (ITB Sub-Clause 22.6), the Bid Document shall allow Bidders to quote separate prices for one or more lots, and shall allow the Employer to award one or multiple lots to more than one Bidder following the methodology specified in ITB Sub-Clause 45.6.
- 45.6 To determine the lowest-evaluated lot or combination of lots, the Employer shall take into account:
- (a) The experience and resources sufficient to meet the aggregate of the qualifying criteria for the individual lot;
 - (b) The lowest-evaluated Bid for each lot calculated in accordance with the requirements of Evaluation Criteria;
 - (c) The price reduction per lot or combination of lots and the methodology for their application as offered by the Bidder in its Bid; and
 - (d) The Contract-award sequence that provides the optimum economic combination taking into account any limitations due to constraints in Works or execution capacity determined in accordance with the post-qualification criteria under ITB Clause 49.
- 45.7 If the Lowest Evaluated Responsive Bid is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analysis for any or all items of the BOQ, to demonstrate the

internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analysis, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the Performance Security set forth in ITB Clause 53 be increased at the expenses of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default by such Bidder during Contract implementation, if awarded the contract.

- 46. Preference for Domestic Bids** 46.1 A margin of preference shall be applied to domestic Bids, if so specified in the SIB, in accordance with the methodology specified in SIB.
- 47. No Negotiations** 47.1 No price negotiations shall be held with the Lowest Evaluated Bidder or any other Bidder.
- 47.2 A Bidder shall not be required, as a condition for award, to undertake responsibilities not stipulated in the Bid documents, to change its price, or otherwise to modify its Bid.
- 48. Lowest Evaluated Bid** 48.1 The Employer shall compare all substantially responsive Bids to determine the lowest-evaluated Bid, in accordance with ITB Clause 45. subject to ITB 46
- 49. Post-qualification** 49.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive Bid is qualified to perform the Contract satisfactorily.
- 49.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 27, to clarifications in accordance with ITB Clause 38 and the qualification criteria indicated in ITB Clauses 11 to 15 inclusive. Factors not included therein shall not be used in the evaluation of the Bidder's qualification.
- 49.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in rejection of the Bidder's Bid, in which event the Employer shall proceed to the next lowest evaluated Bid to make a similar determination of that Bidder's capabilities to perform satisfactorily
- 50. Employer's Right to Accept or to Reject Any or All Bids** 50.1 The Employer reserves the right to accept any Bid, to annul the Bid proceedings, or to reject any or all Bids, at any time prior to Contract award, without thereby incurring any liability to Bidders.

G. Contract Award

- 51. Award Criteria** 51.1 The Employer shall award the Contract to the Bidder whose offer is substantially responsive to the Bid Document and that has been determined to be the Lowest Evaluated Responsive Bid, provided further that the Bidder

is determined to be qualified to perform the Contract satisfactorily.

52. Notification of Award

52.1 Prior to the expiration of the period of Bid validity, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted.

52.2 The Notification of Award shall constitute a binding Contract between the parties until contract signature and the submission of a valid Performance Security.

52.3 The Notification of Award shall state the value of the proposed Contract, the amount of the Performance Security, the time within which the Performance Security shall be submitted and the time within which the Contract shall be signed.

53. Performance Security

53.1 Within fourteen (14) days of the receipt of Notification of Award from the Employer, the successful Bidder shall furnish the Performance Security for the due performance of the Contract in the amount specified in the SIB using for that purpose the Performance Security Form (Form W-6) furnished in Section 5: Bid and Contract Forms.

53.2 The Performance Security shall be valid until a date twenty-eight (28) days after the date of issue of the Certificate of Completion.

54. Contract Signing

54.1 At the same time as the Employer issues the Notification of Award, the Employer shall send the Contract Agreement and all documents forming the Contract, to the successful Bidder.

54.2 Within twenty-one (21) days of receipt of the Contract Agreement, and within one week after having delivered a valid Performance Security to the Employer, the successful Bidder shall sign, date, and return the Contract Agreement to the Employer.

54.3 Failure of the successful Bidder to submit the Performance Security, pursuant to ITB Sub-Clause 53.1, or sign the Contract, pursuant to ITB Sub-Clause 54.2, shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event, the Employer may award the Contract to the next lowest evaluated responsive Bidder at their quoted price (corrected for any arithmetical errors), who is assessed by the Employer to be qualified to perform the Contract satisfactorily.

54.4 Immediately upon receipt of the signed Contract Agreement and Performance Security from the successful Bidder, the Employer shall discharge and return the successful Bidder's Bid Security.

55. Advising

55.1 At the same time as the Employer issues the Notification of Award pursuant to

Unsuccessful Bidders

ITB Clause 52.1, the Employer shall also notify all other Bidders that their Bids have been unsuccessful.

55.2 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification in accordance with ITB Sub-Clause 55.1, requests in writing for the Employer to communicate the grounds on which its Bid was not selected.

56. Adjudicator

56.1 The Employer proposes the person named in the SIB to be appointed as Adjudicator under the Contract, at an hourly or daily fee up to a cap to be agreed by both parties prior to contract execution and for those reimbursable expenses specified in the SIB.

56.2 If the Bidder disagrees with this proposal, the Bidder should state so in its Bid. If, in the Notification of Award, the Employer and the Bidder have still not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the SIB.

57. Bidder's Right to Complain

57.1 Any Bidder has the right to complain if it has suffered or may suffer loss or damage in accordance with the current Public Procurement Regulations for Goods,, Services and Works

57.2 The complaint shall firstly be processed through an administrative review following the procedures set out in section 56 of the Delta State Public Procurement Commission Law, 2008.. The place and address for the first step in the submission of complaints to the Administrative Authority is provided in the SIB.

57.3 If not satisfied with the outcome of the administrative review, the Bidder may complain to the Delta State Public Procurement Commission pursuant to section 56(4) of the Delta State Public Procurement Commission Law, 2008.

Section 2. Special Instructions to Bidders

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| <p><i>Guidelines for completing the Special Instructions to Bidders are provided, as needed, in the notes in italics mentioned for the relevant ITB clauses.</i></p> | |
| ITB Clause | Amendments of, and Supplements to, Clauses in the Instructions to Bidders |
| A. General | |
| ITB 1.1 | <p>The Employer is <i>[state name of Employer]</i> represented by <i>[state name of representative]</i>.</p> <p><i>[the Employer is the unit or subdivision of the Procuring Entity which will issue the Notification of Award and sign the Contract Agreement with the successful Bidder. Frequently the Employer is represented by a Chief Engineer, Superintending Engineer, Executive Engineer, project director or other assigned person]</i></p> |
| | <p>The Name of the Bid is:</p> <p>The number and identification of lots comprising the Bid are:</p> <p><i>[if there is more than one lot, individual lots are to be identified in conformity with Section 6: Bill of Quantities.]</i></p> |
| ITB 2.1 | The source of public funds is <i>[state source, FGN or other source of funds]</i> . |
| ITB 2.3 | The name of the Development Partner is <i>[state name of Development Partner]</i> . |
| ITB 4.1 | Bidders registered or incorporated to carry on business under Nigeria Law only for SCB : |
| ITB 5.1 | Materials, equipment and related services from the following countries are not eligible; |
| B. Bid Document | |
| ITB 8.1 | <p>For <u>clarification of Bids purposes</u> only, the Employer's address is:</p> <p>Attention:</p> <p>Address:</p> <p>Telephone:</p> <p>Facsimile number:</p> <p>Electronic mail address:</p> |

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| | <p><i>Contract period: 18 months</i></p> <p><i>Monthly Cash Flow: 50 M:18 = 2.7 million</i></p> <p><i>Estimated Annual Cash Flow: 2.7 million x 12 = Naira 32.4 million</i></p> <p><i>Required Average annual turnover: Naira 49 million, using a multiplier of 1.5 and rounding the figure]. It will be Naira 32.4 using a multiplier of 1.</i></p> |
| ITB 12.1(b) | <p>The minimum Bid Capacity shall be :</p> <p><i>[the following formulae may be used to calculate the Bid capacity:</i></p> <p><i>Assessed Bid Capacity = (A x N x 1.5 – B)</i></p> <p><i>Where</i></p> <p><i>A = maximum value of works performed in any one year during last five years</i></p> <p><i>N = Completion time of the proposed work in years</i></p> <p><i>B = Value of existing commitments and works to be completed during the next N years.</i></p> <p><i>For Bids where the package contains more than one (1) lot, this qualification requirement shall be mentioned separately for each lot in the package]</i></p> |

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|-----------------------------------|--|------------------------|-------------------------|-------------------------|------------------|-----------------------------------|--------------------|----------------------------|----------------|------------------------|------------------|----------------------------|------------------|--------------------------|----------------|--|--------------|--|-----------------|
| <p>ITB 12.2</p> | <p>The minimum amount of free funds (liquid assets) and/or credit facilities net of other Contractual commitments of the successful Bidder shall be <i>[insert amount]</i>.</p> <p><i>[usually the required liquid asset is the equivalent of 2-6 months payment flow at the average construction rate (straight line distribution), accessible or available after taking into account the financial requirements of existing commitments. The actual period will depend on the speed with which the Employer will pay the Contractor's monthly certificate, allowing time to prepare an invoice, for the Engineer's time to certify it, and at least one month contingency for preparing the cheque and making actual payment.]</i></p> <p><i>Example:</i></p> <table data-bbox="440 661 1448 1113"> <tr> <td><i>Contract Value:</i></td> <td><i>Naira 50 million</i></td> </tr> <tr> <td><i>Contract period:</i></td> <td><i>18 months</i></td> </tr> <tr> <td><i>Monthly payment 50 M: 18 =</i></td> <td><i>2.7 million</i></td> </tr> <tr> <td><i>Assuming work time:</i></td> <td><i>1 month</i></td> </tr> <tr> <td><i>Invoice period:</i></td> <td><i>0.5 month</i></td> </tr> <tr> <td><i>Certification Time:</i></td> <td><i>0.5 month</i></td> </tr> <tr> <td><i>Contingency Time:</i></td> <td><i>1 month</i></td> </tr> <tr> <td></td> <td><i>-----</i></td> </tr> <tr> <td></td> <td><i>3 months</i></td> </tr> </table> <p><i>Therefore, the minimum required liquid assets will be Naira 8.0 million, i.e. 3 months cash flow (3 x 2.7 m) rounded up or down based on the above assumptions.].</i></p> <p><i>For Bids where the package contains more than one (1) lot, this qualification requirement shall be mentioned separately for each lot in the package]</i></p> | <i>Contract Value:</i> | <i>Naira 50 million</i> | <i>Contract period:</i> | <i>18 months</i> | <i>Monthly payment 50 M: 18 =</i> | <i>2.7 million</i> | <i>Assuming work time:</i> | <i>1 month</i> | <i>Invoice period:</i> | <i>0.5 month</i> | <i>Certification Time:</i> | <i>0.5 month</i> | <i>Contingency Time:</i> | <i>1 month</i> | | <i>-----</i> | | <i>3 months</i> |
| <i>Contract Value:</i> | <i>Naira 50 million</i> | | | | | | | | | | | | | | | | | | |
| <i>Contract period:</i> | <i>18 months</i> | | | | | | | | | | | | | | | | | | |
| <i>Monthly payment 50 M: 18 =</i> | <i>2.7 million</i> | | | | | | | | | | | | | | | | | | |
| <i>Assuming work time:</i> | <i>1 month</i> | | | | | | | | | | | | | | | | | | |
| <i>Invoice period:</i> | <i>0.5 month</i> | | | | | | | | | | | | | | | | | | |
| <i>Certification Time:</i> | <i>0.5 month</i> | | | | | | | | | | | | | | | | | | |
| <i>Contingency Time:</i> | <i>1 month</i> | | | | | | | | | | | | | | | | | | |
| | <i>-----</i> | | | | | | | | | | | | | | | | | | |
| | <i>3 months</i> | | | | | | | | | | | | | | | | | | |
| | <p>A Construction Project Manager shall have the following qualifications and experience: (Insert)</p> | | | | | | | | | | | | | | | | | | |
| <p>ITB 13.1(b)</p> | <p>The Minimum number of Engineers with qualifications and experience shall be as follows:(Insert List)</p> | | | | | | | | | | | | | | | | | | |
| <p>ITB 13.1(c)</p> | <p>Other key staff with qualifications and experience shall be as follows: (Insert List)</p> | | | | | | | | | | | | | | | | | | |
| <p>ITB 14.1</p> | <p>The Bidder shall own or have assured access of the essential equipment, in full working order as follows: (Insert List of equipment)</p> <p><i>[for Bids where the package contains more than one (1) lot, the staffing and equipment requirements in ITB 14.1(a) to (c) and ITB 15.1 above shall be mentioned separately for each lot in the package].</i></p> | | | | | | | | | | | | | | | | | | |

| D. Preparation of Bid | |
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| ITB 18.1 | The Bid, as well as all correspondence and documents relating to the Bid shall be in the English language |
| ITB 19.1(i) | The Bidder shall submit with its Bid the following additional documents: <i>[Note: In case of purchase of capital equipment by the Contractor as part of the overall Contract, a Performance Statement of the capital equipment in Nigeria may be necessary and may be requested. if no other documents are required then specify “none”]</i> |
| ITB 21.1 | Alternative Bids will not be permitted. OR Alternative Bids will be permitted. <i>[If alternative Bids are permitted then outline the method and evaluation criteria for such alternatives].</i> |
| ITB 22.5 | The prices quoted by the Bidder shall be fixed for the duration of the Contract. OR The prices quoted by the Bidder shall be adjustable as follows,... <i>[If prices shall be adjustable, the methodology for adjustment should now be specified. in the SCC, Section 4]</i> |
| ITB 22.6 & ITB 45.5 | Bids are being invited for an individual lot. OR Bids are being invited for a combination of lots. <i>[Mention the Contract lot Numbers above for Bids that anticipate the award of more than one Contract and state that Bidders can submit a Bid for one or more lots in the package. Bidders will indicate in their Bid any discounts or cross-discounts which they offer for the award of more than one Contract.]</i> |
| ITB 26.1 | The required Technical Documents shall include the following additional information: <ul style="list-style-type: none"> i. Work plan/Programme of Works ii. Statement of work method iii. Technical specification and brochures of machinery/plant to be incorporated in the works |

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| | iv. <i>[Any other information that may be required should be stated here]</i> |
| ITB 27.4 | A Bid submitted by a JV shall <u>also</u> comply with the following requirements: |
| ITB 29.1 | The Bid validity period shall be [] days. <i>[normally 60 to 120 days for Works of a simple nature. For complex Works the period may be extended up to 150 days] Please consider how long it might take to obtain other approvals if any required.</i> |
| ITB 30.1 | The amount of the Bid Security shall be [Naira] <i>[The Bid Security shall be issued by a reputable bank or financial institution selected by the Bidder and amongst the list acceptable to the Employer A Bidder may request the Employer in advance if a particular issuing entity of a security is acceptable. [For more than one lot in a package, the Bid Security for each lot should be mentioned separately. The Bid Security amount should be expressed as a fixed amount (not more than 2% of the estimated contract value) for each lot. OR</i> |
| ITB 31.1 | In addition to the original of the Bid, [] copies shall be submitted. <i>[usually three copies are needed, ask for more only if only they are essential].</i> |
| E. Submission of Bid | |
| ITB 32.2 (c) | The inner and outer envelopes shall bear the following additional identification marks: <i>[indicate any markings that are required on inner and outer envelopes]</i> |
| ITB 33.1 | For <u>Bid submission purposes</u> only, the Employer's address is: Attention: Address: The deadline for the submission of Bids is: Date: Time: Venue; (Specific and detailed address including room number where applicable) |

| F. Opening and Evaluation of Bid | |
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| ITBITB 36.1 | <p>The Bid opening shall take place at:</p> <p>Address</p> <p>Date:</p> <p>Time:</p> <p>Venue;</p> |
| ITB 45.6(a) | . |
| ITB 46 | <p>A margin of preference (<i>specify : “applies” or “does not apply”</i>) to domestic contractors. (<i>And if it applies, add “the margin of preference amounts to percent of the evaluated Contract Price</i>).</p> <p><i>[A margin of preference only applies to domestic contractors in the event of international competition and should not exceed 7.5% of the evaluated Contract Price. The evaluation procedure for domestic preference is attached under H].</i></p> |
| G. Award of Contract | |
| ITB 53.1 | <p>The amount of Performance Security shall be [] percent of the Contract Price.</p> <p><i>[It should not be less than ten (10) percent of the Contract Price or it however should not be less than the value of mobilization payment, where mobilization is payable. If, in addition, Retention Money is applied, the percentages of the Performance Security and the Retention Money combined should ideally not exceed fifteen (15) percent. The ideal maximum will be 10percent, but for the requirement of the DSPPCL 2008 for a performance guarantee to be 10% and above of the value of the contract. Note that higher percentages will require a more costly financing arrangement between the Bidder and its Bank or financial provider, and will only increase the cost of the contract to government]</i></p> <p><i>[The Performance Security shall be issued by a reputable bank or financial institution selected by the Bidder and amongst the list of banks acceptable to the Employer. A Bidder may request the Employer in advance if a particular issuing entity of a security is acceptable.</i></p> |
| ITB 56.1 | <p>The Adjudicator proposed by the Employer is <i>[insert name and address]</i>. The hourly or daily fee shall be Naira <i>[insert amount]</i> and the reimbursable expenses shall be limited to <i>[state nature of reimbursable expenses, and</i></p> |

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| | <p><i>limitations in value, if any].</i></p> <p>The biographical data of the Adjudicator is <i>[provide relevant information, such as education, experience, age, nationality, and present position; attach additional pages as necessary]</i></p> |
| ITB 56.2 | In case of disagreement between the parties, the Appointing Authority for the Adjudicator is [the Delta State Branch Chairman of the Nigerian Society of Engineers] |
| ITB 57.2 | The name and address of the office where complaints to the Procuring Entity are to be submitted under paragraph 21 of the Public Procurement Regulations for Goods Works, and Services is:(Insert) |
| H Preference for Domestic Contractors | |
| 1. | <p>For the purpose of the application of preference for domestic contractors, such contractors must first provide the evidence that they, either as an individual or as a group, qualify with the following provisions:</p> <p>(a) it is incorporated or otherwise organized in Nigeria;</p> <p>(b) its principal place of business is located in Nigeria;</p> <p>(c) at least 50% of the equity is held by nationals of Nigeria.;</p> <p>(d) at least one half of its senior officers are nationals of Nigeria;</p> <p>(e) more than 70% of the persons who will perform services under the contract, whether employed directly or by a subcontractor, are nationals of Nigeria.</p> |
| 2. | <p>Where a preference is granted for domestic contractors for works to be awarded on the basis of ICB, responsive Bids shall be classified in one of the following two groups:</p> <p><u>Group A</u>: Bids from eligible domestic contractors, which have established to the satisfaction of the Procuring Entity and the Delta State Public Procurement Commission to be eligible for domestic preference.</p> <p><u>Group B</u>: Bids from other (foreign) contractors.</p> |
| 3. | <p>For the purpose of evaluation and comparison of Bids, after having compared and adjusted all Bids where necessary, an amount equal to 7.5 percent of the Bid amount of the lowest evaluated Bid of group B will be added to that Bid. If the Bid from Group B is still the lowest evaluated responsive Bid, the Bid from Group B will be selected for award. If as a result of adding the 7.5 percent of the Bid price of the lowest evaluated Bid in Group B to that Bid, the lowest evaluated responsive Bid of Group A becomes the lowest, that Bid from Group A will be selected for award.</p> |

Section 3. General Conditions of Contract

A. General

- 1. Definitions**
- 1.1 The following words and expressions shall have the meaning hereby assigned to them. Boldface type is used to identify the defined terms:
- (a) The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC Sub-Clause 82.2.
 - (b) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.
 - (c) **Compensation Events** are those defined in GCC Clause 64.
 - (d) **Completion Certificate** means the Certificate issued by the Engineer as evidence that the Contractor has executed the Works in all respects as per drawing, specifications and Conditions of Contract.
 - (e) The **Completion Date** is the date of completion of the Works as certified by the Engineer, in accordance with GCC Clause 74.
 - (f) **Contract Agreement** means the Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein to execute, complete, and maintain the Works.
 - (g) **Contract Documents** means the documents listed in GCC Clause 5, including any amendments thereto.
 - (h) **Contractor** means the natural person, private or government enterprise, or a combination of the above, whose Bid to carry out the Works has been accepted by the Employer and is named as such in the SCC and the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.
 - (i) **Contract Price** means the price payable to the Contractor as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, for the execution, completion and maintenance of the Works in accordance with the provisions of the Contract.
 - (j) The **Contractor's Bid** is the completed Bid Document including the priced offer submitted by the Contractor to the

Employer.

- (k) **Day** means calendar day.
- (l) **Dayworks** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- (m) A **Defect** is any part of the Works not completed in accordance with the Contract.
- (n) The **Defects Correction Certificate** is the certificate issued by Engineer upon correction of defects by the Contractor.
- (o) The **Defects Liability Period** is the period named in the SCC and calculated from the Completion Date.
- (p) **Drawings** include calculations and other information provided in Section 9 or approved by the Engineer for the execution and completion of the Contract.
- (q) The **Employer** is the party named in the SCC who employs the Contractor to carry out the Works.
- (r) The **Engineer** is the person named in the SCC (or any other competent person appointed by the Employer and notified to the Contractor) who is responsible for supervising the execution and completion of the Works and administering the Contract.
- (s) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (t) **GCC** mean the General Conditions of Contract.
- (u) **Government** means the Government of Delta State of Nigeria.
- (v) The **Initial Contract Price** is the Contract Price listed in the Employer's Notification of Award.
- (w) The **Intended Completion Date** is the date specified in the SCC on which the Contractor shall complete the Works and may be revised if extension of time or an acceleration order is issued by the Engineer.
- (x) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (y) **Month** means calendar month.
- (z) **SCC** means the Special Conditions of Contract.
- (aa) **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (ab) **Procuring Entity** is the Ministry, department, Agency, or

Government's Entity that procures and administers the contract. The Procuring Entity may be the same legal person as the Employer but if it is not, the Employer is the party to the contract.

- (ac) The **Site** is the area defined as such in the SCC.
- (ad) **Site Investigation Reports** are those that were included in the Bid Document and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (ae) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Engineer.
- (af) The **Start Date** is the date given in the SCC and 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.
- (ag) **Subcontractor** means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, who have a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (ah) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (ai) A **Variation** is an instruction given by the Engineer that varies the Works.
- (aj) The **Works** are what the Contract requires the Contractor to construct, install, and hand over to the Employer, as defined in the SCC.
- (ak) **Writing** means any hand-written, type-written, or printed communication including telex, cable and facsimile transmission.

- 2. **Contract Documents**
 - 2.1 Subject to the order of precedence set forth in GCC Sub-Clause 5.1, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.
- 3. **Corrupt, Fraudulent, Collusive, Coercive or**
 - 3.1 The Government requires that Employers, as well as Contractors observe the highest standard of ethics during the implementation of procurement proceedings and the execution of Contracts funded with public funds.

**Obstructive
Practices**

3.2 In pursuance of this requirement, the Employer shall :

- (a) Exclude the Contractor from participation in the procurement proceedings concerned or reject a proposal for award; and
- (b) Declare a Contractor ineligible, either indefinitely or for a stated period of time, from participation in procurement proceedings under public fund;
- (c) If at any time it determines that the Contractor has engaged in breaches of ethics rules, corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Contract under public fund.

3.3 Should any breaches of ethics rules, related mandatory provisions of the Delta State Public Procurement Commission Law 2008, Procurement Regulations or Standard Documents issued therefrom, corrupt, fraudulent, collusive or coercive practice of any kind whether or not referred to in GCC Sub-Clause 3.4 come to the knowledge of the Employer, it shall, in the first place, allow the Contractor to provide an explanation and shall, take actions as stated in GCC Sub-Clause 3.2 only when a satisfactory explanation is not received. Such exclusion and the reasons thereof, shall be recorded in the record of the procurement proceedings and promptly communicated to the Contractor concerned. Any communications between the Contractor and the Employer related to matters of alleged corrupt, fraudulent, collusive or coercive practices shall be in writing.

3.4 The Government defines, for the purposes of this provision, the terms set forth below as follows:

- (a) “corrupt practice” means offering, giving, or promising to give, directly or indirectly, to any officer or employee of a Procuring Entity or other governmental/private authority or individual a gratuity in any form, an employment or any other thing or service of value, as an inducement with respect to an actor decision of, or method followed by, a Procuring Entity in connection with the procurement proceeding;
- (b) “fraudulent practice” means a misrepresentation, or omission of facts in order to influence a procurement proceedings or the execution of a Contract to the detriment of a Competitor or the Employer,
- (c) “collusive practice” means a scheme or arrangement among two or more Bidders with or without the knowledge of the Employer (prior to or after proposal submission), including non-disclosure of dominating, subsidiary or similar relationships designed to establish Bid prices at artificial, non-competitive levels or to wrongfully obtain a procurement contract and thereby deprive the Employer of the benefits of free, open and genuine competition; and
- (d) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence the procurement proceedings, or affect the execution of a Contract.
- (e) “breaches of ethics rules” means and includes all breaches of codes of conduct for contractors, suppliers or persons involved in public procurement and or related mandatory provisions contained in the Delta State Public Procurement Commission Law 2008, the Public Procurement Regulations and Standard Bidding Document issued therefrom and any other applicable codes of conduct in force
- (f) obstructive practice which means
 - i. Deliberately destroying, falsifying, altering or concealing of evidence material to the enquiry, investigation or making false statements to investigators in order to materially impede relevant authorities’ investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - ii. Acts intended to materially impede the exercise of the Board’s inspection and or audit rights provided for under par. 3.2 (c) above or enquiry by any relevant authority into any related issue.

- 3.5 The Government and or Employers' personnel have an equal obligation not to solicit, ask for and/or use coercive methods to obtain personal benefits in connection with the said proceedings or to commit any infractions here mentioned or provided for in the Delta State Public Procurement Commission Law 2008, rules or SBDs issued therefrom.
- 3.6 The Contractor shall permit the Employer to inspect the Contractor's accounts and records and other documents relating to the submission of Bid and contract performance, and to have them audited by auditors appointed by the Employer, if so required.

4. Interpretation

- 4.1 In interpreting the GCC, singular also means plural, male also means female or neuter, and the other way around. Headings in the GCC shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Contract. Words have their normal meaning under the language of the Contract unless specifically defined.
- 4.2 Entire Agreement
 - (a) The Contract constitutes the entire agreement between the Employer and the Contractor and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract Agreement.
- 4.3 Non-waiver
 - (a) Subject to GCC Sub-Clause 4.3(b), no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
 - (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

4.4 Severability

- (a) If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

4.5 Sectional completion

- (a) If sectional completion is specified in the SCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

5. Documents Forming the Contract and Priority of Documents

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

- (a) The signed Contract Agreement;
- (b) The letter of Notification of Award (and Letter of Acceptance);
- (c) The completed Bid Submission Sheet as submitted by the Bidder;
- (d) The priced Bill of Quantities as submitted by the Bidder;
- (e) The Special Conditions of Contract;
- (f) The General Conditions of Contract;
- (g) The Particular and General Specifications;
- (h) The Drawings, and;
- (i) Any other document listed in the SCC as forming part of the Contract.

6. Eligibility

6.1 The Contractor and its Sub-Contractors shall have the nationality of a country other than any specified in the SCC.

6.2 All materials, equipment, plant, and supplies used by the Contractor in both permanent and temporary works and services supplied under the Contract shall have their origin in any country except those specified in the SCC.

- 7. Governing Language**
- 7.1. The Contract as well as all correspondence and documents relating to the Contract exchanged by the Contractor and the Employer, shall be written in English. Supporting documents and printed literature that are part of the Contract 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 Contract, this translation shall govern.
- 7.2. The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.
- 8. Governing Law**
- 8.1 The Contract shall be governed by and interpreted in accordance with the laws of the Delta State as applicable and the laws of the Federal Republic of Nigeria. .
- 9. Gratuities / Agency fees**
- 9.1 No fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the Bid or the Contract, shall be given or received in connection with the procurement process or in the Contract execution.
- 10. Joint Venture, (JV)**
- 10.1 If the Contractor is a joint venture, all of the parties shall be jointly and severally liable to the Employer for the fulfilment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior consent of the Employer.
- 11. Confidential Information**
- 11.1 Subject to the Freedom of Information Act 2011, the Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Sub-Contractor such documents, data, and other information it receives from the Employer to the extent required for the Sub-Contractor to perform its work under the Contract, in which event the Contractor shall obtain from such Sub-Contractor an undertaking of confidentiality similar to that imposed on the Contractor under GCC Clause 11.

- 11.2 The Employer shall not use such documents, data, and other information received from the Contractor for any purposes unrelated to the Contract. Similarly, the Contractor shall not use such documents, data, and other information received from the Employer for any purpose other than the design, construction, or other work and services required for the performance of the Contract.
- 11.3 The obligation of a party under GCC Sub-Clauses 11.1 and 11.2 above, however, shall not apply to information that:
- a) The Employer or Contractor needs to share with institutions participating in the financing of the Contract;
 - b) Now or hereafter enters the public domain through no fault of that party;
 - c) Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
 - d) Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
 - e) Otherwise required to be disclosed by law.
- 11.4 The above provisions of GCC Clause 11 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Works or any part thereof.
- 11.5 The provisions of GCC Clause 11 shall survive completion or termination, for whatever reason.

12. Communications and Notices

- 12.1 Communications between Parties (notice, request or consent required or permitted to be given or made by one party to the other) pursuant to the Contract shall be in writing to the address specified in the SCC.
- 12.2 A notice shall be effective on the date when delivered or on the notice's declared effective date, whichever is later.
- 12.3 A Party may change its address for notice hereunder by giving the other Party notice of such change to the address in writing.

13. Copyright

- 13.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor, or, if they are furnished to the Employer directly or through the Contractor by any third party, including Suppliers of materials, the copyright in such materials shall remain vested in such third party, provided that

copyright in any work output undertaken and paid for by the Employer shall belong to the Employer

- 14. Assignment** 14.1 The Contractor shall not assign, in whole or in part, its obligations under the Contract, except with the Employer's prior written consent.
- 15. Sub-Contracting** 15.1 The Contractor shall obtain approval of the Employer in writing of all Sub-Contracts to be awarded under the Contract if not already specified in the Bid. Sub-Contracting shall in no event relieve the Contractor from any of its obligations, duties, responsibilities, or liability under the Contract.
- 15.2 Sub-Contractors shall comply with the provisions of GCC Clause 3.
- 16. Other Contractors** 16.1 The Contractor shall cooperate and share the Site with other Contractors, public authorities, utilities, the Engineer and the Employers relevant staff between the dates given in the Schedule of Other Contractors, as referred to in the SCC. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
- 17. Contractor's Responsibilities** 17.1 The Contractor shall execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract Agreement.
- 18. Employer's Responsibilities** 18.1 The Employer shall 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 Agreement.
- 18.2 The Employer shall make its best effort to assist the Contractor in obtaining, if required, any permit, licence, and approvals from local public authorities.
- 19. Scope of Works** 19.1 The Works to be executed, completed and maintained shall be as specified in the Bill of Quantities, the General and Particular Specifications and Drawings.
- 19.2 Unless otherwise stipulated in the Contract, the Works shall include all such items not specifically mentioned in the Contract, but that can be reasonably inferred from the Contract as being required for completion of the Works, as if such items were expressly mentioned in the Contract.

- 20. Contract Price** 20.1 The Contract Price shall be as specified in the Contract Agreement, subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract.
- 21. Engineer's Decisions** 21.1 Except where otherwise specifically stated in the SCC, the Engineer will decide Contractual matters between the Employer and the Contractor in its role as representative of the Employer.
- 22. Queries about the Contract conditions** 22.1 The Engineer will clarify queries on the Conditions of Contract.
- 23. Delegation** 23.1 The Engineer may delegate any of his duties and responsibilities to his representative except to the Adjudicator, after notifying the Contractor, and may cancel any delegation, without retroactivity, after notifying the Contractor.
- 23.2 Any communications to the Contractor in accordance with such delegation shall have the same effect as if it was given by the Engineer.
- 24. Contractor's Personnel** 24.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the SCC, to carry out the functions stated in the Schedule or other personnel approved by the Engineer.
- 24.2 The Engineer will 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.
- 24.3 If the Engineer asks the Contractor to remove a person who is a member of the Contractor's staff or work force from the Site, he shall state the reasons, and the Contractor shall ensure that the person leaves the Site within three (3) days and has no further connection with the work in the Contract.
- 25. Approval of the Contractor's Temporary Works** 25.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Engineer, who is to approve them, if they comply with the Specifications and Drawings.
- 25.2 The Contractor shall be responsible for design of Temporary Works.

- 25.3 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Engineer before their use.
- 25.4 The Engineer's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 25.5 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required
- 26. Instructions** 26.1 The Contractor shall carry out all instructions of the Engineer that comply with the applicable laws where the Site is located.
- 27. Site Investigation Reports** 27.1 The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the SCC, supplemented by any information available to the Bidder.
- 28. Possession of the Site** 28.1 The Employer shall give possession of the Site, or parts of the Site, to the Contractor on the date(s) stated in the SCC. If possession of a part is not given by the date stated in the SCC, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.
- 29. Access to the Site** 29.1 The Contractor shall allow the Engineer and any person authorised by the Engineer access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
- 30. Safety, Security and Protection of the Environment** 30.1 The Contractor shall throughout the execution and completion of the Works and the remedying of any defects therein:
- (a) have full regard for the safety of all persons entitled to be upon the Site and keep the Site and the Works in an orderly state;
 - (b) provide and maintain at the Contractor's own cost, all lights, guards, fencing, warning signs and watching for the protection of the Works or for the safety on-site, and
 - (c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of the Contractors methods of operation.
 - (d) Replant trees cut down and plant others that may be required.
 - (e) Comply with any related laws, regulations and standards
- 31. Discoveries** 31.1 Anything of cultural, historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of

the Employer. The Contractor shall notify the Engineer of such discoveries and carry out the Engineer's instructions for dealing with them.

- 32. Welfare of Labour**
- 32.1 The Contractor shall provide proper accommodation to his labourers and arrange proper water supply, conservancy and sanitation arrangements at the site in accordance with relevant regulations, rules and orders of the government.
- 32.2 The Contractor shall pay reasonable wages to his labourers, and pay them in time. [In the event of delay in payment the Employer may effect payments to the labourers and recover the cost from the Contractor.]
- 33. Minimum Wage**
- 33.1 The Contractor shall comply with the applicable minimum wage labour laws and requirements (including applicable treaties which have been ratified by Nigeria) and bilateral agreement entered into by the Government of Delta State.
- 34. No Work on holidays**
- 34.1 The Contractor shall not perform any work on the Site on Sundays, or on any religious or public holiday, without the prior written approval of the Engineer.
- 35. Employer's and Contractor's Risks**
- 35.1 The Employer carries the risks that the Contract stipulates are Employer's risks and the Contractor carries the risks that the Contract stipulates are Contractor's risks.
- 36. Employer's Risks**
- 36.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
 - (i) Use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
 - (ii) Negligence, breach of statutory duty, or interference with any legal right by the Employer 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 Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

- 36.2 From the Completion Date (upon handover) until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk, except loss or damage due to:
- (a) A Defect which existed on the Completion Date;
 - (b) An event occurring before the Completion Date, which was not itself an Employer's risk; or
 - (c) The activities of the Contractor on the Site after the Completion Date.

37. Contractor's Risks

- 37.1 From the Start Date until the Defects Correction Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.

38. Insurance

- 38.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the SCC for the following events which are due to the Contractor's risks:
- (a) Loss of or damage to the Works, Plant, and Materials;
 - (b) Loss of or damage to Equipment;
 - (c) Loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
 - (d) Personal injury or death.
- 38.2 The Contractor shall deliver policies and certificates of insurance to the Engineer, for the Engineer's approval, before the Start Date. All such insurances shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 38.3 If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt from Contractor due to the Employer.

- 38.4 Alterations to the terms of insurance shall not be made without the approval of the Engineer.
- 38.5 Both parties shall comply with conditions of the insurance policies.
- 39. Taxes and Duties** 39.1 The Contractor shall be entirely responsible for all taxes, duties, license fees, contributions and other such levies imposed outside and inside Delta State and or Nigeria except they obtain valid exemptions.
- 40. Limitation of Liability** 40.1 Except in cases of criminal negligence or wilful misconduct:
- (a) the Contractor shall not be liable to the Employer, whether in Contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and
 - (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective Works, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement
- 41. Force Majeure** 41.1 The Contractor shall not be liable for forfeiture of its Performance Security, 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.
- 41.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but not be limited to, acts of the Employer in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 41.3 If a Force Majeure situation arises, the Contractor shall promptly notify the Employer in writing of such condition and the cause thereof. Unless otherwise directed by the Employer in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

B. Time Control

- 42. The Works to Be Completed by the Intended Completion Date** 42.1 The Contractor may 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 Engineer, and complete them by the Intended Completion Date.
- 43. Programme of Works** 43.1 Within the time stated in the SCC, the Contractor shall submit to the Engineer for approval a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works. The programme may be in the form of an Implementation Schedule prepared in Microsoft Project or in any other software programme acceptable by the Employer.
- 43.2 The Contractor shall submit to the Engineer for approval an updated Programme at intervals no longer than the period stated in the SCC. An update of the Programme shall be a Programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 43.3 If the Contractor does not submit an updated Programme at the intervals stated in the SCC, the Engineer may withhold an amount as stated in the SCC from the next payment certificate and continue to withhold this amount until the next due payment after the date on which the overdue Programme has been submitted.
- 43.4 The Engineer's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Engineer again at any time. A revised Programme shall show the effect of Variations and Compensation Events.
- 44. Pro Rata Progress** 44.1 The Contractor shall maintain Pro Rata progress of the works. Progress to be achieved shall be pursuant to GCC Sub- Clause 43.1 and shall be determined in terms of the value of the works done
- 45. Early Warning** 45.1 If at any time during performance of the Contract, the Contractor or its Subcontractors should encounter events, circumstances and conditions that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works, the Contractor shall promptly notify the Engineer in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Contractor's notice, the Engineer shall evaluate the situation, and the Contractor shall cooperate with the Engineer

in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced. The Engineer 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 Contractor shall provide the estimate as soon as reasonably possible.

46. Extension of the Intended Completion Date

46.1 The Engineer shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost. The Engineer shall notify the Contractor accordingly, with a copy to the Employer.

46.2 The Engineer shall decide whether and by how much to extend the Intended Completion Date within twenty-one (21) days of the Contractor asking the Engineer for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

46.3 Except in case of Force Majeure, as provided under GCC Clause 41, a delay by the Contractor in the performance of its Completion obligations shall render the Contractor liable to the imposition of liquidated damages pursuant to GCC Clause 68, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 46.2.

46.4 If the Contractor fails to complete the Works by the Intended Completion Date, or as extended by the Engineer as the case may be, the Contractor shall be liable to pay liquidated damages to the Employer, in accordance with GCC, Sub-Clause 68.1.

47. Acceleration

47.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Engineer will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Employer and the Contractor.

47.2 If the Employer accepts the Contractor's priced proposals for acceleration, they are incorporated in the Contract Price and treated as a Variation.

- 48. Delays Ordered by the Engineer** 48.1 The Engineer may instruct the Contractor to delay the start or progress of any activity within the Works.
- 49. Management Meetings** 49.1 Either the Engineer or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 49.2 The Engineer shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Engineer either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

C. Quality Control

- 50. Contractor to Construct the Works** 50.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings as scheduled in GCC Sub-Clause 5.1.
- 51. Works open to Inspection** 51.1 All works under the Contract shall at all times be open to inspection and supervision of the Engineer, and the Contractor shall ensure presence of its representatives at such inspections provided proper advance notice is given by the Engineer.
- 52. Identifying Defects** 52.1 The Engineer shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Engineer may instruct the Contractor to search for a Defect and to uncover and test any work that the Engineer considers may have a Defect.
- 53. Tests** 53.1 If the Engineer instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 54. Examination of Work before covering up** 54.1 No part of the Works shall be covered up or put out of view without the approval of the Engineer. The Contractor shall give notice in writing to the Engineer whenever any such part of the Works is ready for examination and the Engineer shall attend to such examination alone or with any persons he may choose to accompany him without unreasonable delay.

- 55. Correction of Defects** 55.1 The Engineer shall give notice to the Contractor, with a copy to the Employer, of any Defects before the end of the Defects Liability Period², which begins at Completion, and is defined in the SCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 55.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Engineer's notice.
- 56. Uncorrected Defects** 56.1 If the Contractor has not corrected a Defect within the time specified in the Engineer's notice, the Engineer will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

D. Cost Control

- 57. Bill of Quantities** 57.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.
- 57.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.
- 58. Changes in the Quantities** 58.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than fifteen (15%), provided the change does not exceed one percent (1%) of the Initial Contract Price, the Engineer shall adjust the rate to allow for the change.
- 58.2 The Engineer shall no more adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than two percent (2%), except with the prior approval of the Employer.
- 58.3 If requested by the Engineer, the Contractor shall provide the Engineer with a detailed cost breakdown of any rate in the Bill of Quantities.
- 59. Variations** 59.1 All Variations shall be included in updated Programmes produced by the Contractor.

² The Defects Liability Period is usually limited to 12 months, but could be less in simple works.

60. Payments for Variations

60.1 The Contractor shall provide the Engineer with a quotation for carrying out the Variation when requested to do so by the Engineer. The Engineer shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Engineer and before the Variation is ordered.

60.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Engineer, the quantity of work above the limit stated in GCC Sub-Clause 58.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

60.3 If the Contractor's quotation is found to be reasonable, the Engineer may order the Variation and make a change to the Contract Price, which shall be based on the Engineer's own forecast of the effects of the Variation on the Contractor's costs.

60.4 If the Engineer decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

60.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

61. Cash Flow Forecasts

61.1 When the Programme is updated, the Contractor shall provide the Engineer with an updated cash flow forecast.

62. Payment Certificates

62.1 The Contractor shall submit to the Engineer monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

62.2 The Engineer shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

62.3 The value of work executed shall be determined by the Engineer.

62.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.

62.5 The value of work executed shall include the valuation of Variations, Certified Dayworks and Compensation Events.

62.6 The Engineer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

63. Payments

63.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Engineer within thirty (30) days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest is due and shall be calculated from the 60th day after the date by which the payment should have been made up to the date when the late payment is made at a rate per annum stipulated in the Special Conditions of contract.

63.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator, or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause according to the rate stipulated in the Special Conditions of Contract. Interest shall be calculated from the date upon which the increased amount would have been certified or become delayed payment (whichever is later) in the absence of dispute.

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

64. Compensation Events

64.1 The following shall be Compensation Events:

- (a) The Employer does not give access to the Site or part of the Site by the Site Possession Date stated in the SCC.
- (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
- (c) The Engineer orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (d) The Engineer instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Engineer unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Engineer gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other Contractors, public authorities, utilities, or the Employer do not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Engineer unreasonably delays issuing a Certificate of Completion.
- (l) A situation of Force Majeure has occurred, as defined in GCC Clause 41;
- (m) Other Compensation Events described in the SCC or determined by the Engineer shall apply.

64.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Engineer shall decide whether and by how much the Intended Completion Date shall be extended. whether and by how much the Contract Price shall be increased

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

64.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having cooperated with the Engineer.

**65. Change in
Laws and
Regulations**

65.1 Unless otherwise specified in the Contract, if between the date twenty-eight (28) days before the submission of Bids for the Contract and the date of the last Completion certificate, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Delta State and or Nigeria (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Completion Date and/or the Contract Price, then such Completion Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract.

65.2 The Engineer shall adjust the Contract Price on the basis of the change in the amount of taxes, duties, and other levies payable by the Contractor, provided such changes have not already been accounted for in the price adjustment as defined in GCC Clause 66 and/or reflected in the Contract Price.

66. Price Adjustment

66.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the SCC. If so provided, the amounts as certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amount. The formula indicated below applies:

$$P = A + B (I_m/I_o)$$

where:

P is the adjustment factor

A and B are coefficients³ specified in the SCC, representing the nonadjustable and adjustable portions, respectively, of the Contract; and

I_m is the index prevailing at the end of the month being invoiced and I_o is the index prevailing twenty-eight (28) days before Bid opening.

The index to be used is as published by the [Nigeria Bureau of Standards] on a month basis.

66.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

67. Retention

67.1 The Employer shall retain⁴ from each payment due to the Contractor the proportion stated in the SCC until completion of the whole of the Works.

67.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor, the remaining half shall be repaid when the Defects Liability Period has passed and the Engineer has certified that all Defects notified by the Engineer to the Contractor before the end of this period have been corrected.

67.3 On completion of the whole of the Works, the Contractor may substitute retention money with an unconditional Bank Guarantee.

³ The sum of the two coefficients A and B should be 1 (one) in the formula.

⁴ The retention amount is usually 5 percent and in no case should exceed 10 percent. If retention money is used in combination with a performance security, the combined amount should not exceed 15 percent of the contract price. In this instance with the statute requiring high percent of contract value as advance payment and performance guarantees, retention rates should in no circumstance exceed 5 percent.

68. Liquidated Damages

68.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the SCC for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

68.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 63.1.

69. Bonus

69.1 The Contractor shall be paid a Bonus⁵ calculated at the rate per calendar day if stated in the SCC for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Engineer shall certify that the Works are complete, although they may not be due to be complete.

70. Advance Payment

70.1 If so specified in the SCC, the Employer shall make advance payment to the Contractor in the amounts and by the dates stated in the SCC against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in an amount equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment⁶.

70.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer.

⁵ If early completion would provide benefits to the Employer, this clause should remain; otherwise delete. The bonus is usually numerically equal to the liquidated damages.

⁶ In the case of ICB this clause will remain as is here, however the law allows the procuring entity discretion in the case of SCB to choose from either a bank guarantee or an insurance bond, experience shows that bank guarantees are more reliable, if however a situation occurs where the procuring entity finds that it might be safe to choose an insurance bond, it should issue a list of insurance companies acceptable to it and accordingly amend lines 2-5 of this clause to reflect (" against provision by the Contractor of an Unconditional Bank Guarantee or Insurance bond in a form and by a bank or insurance company acceptable to the Employer in an amount equal to the advance payment). This decision may need to be taken before issuance of bidding documents.

70.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis as stated in the SCC. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

71. Performance Security

71.1 The Employer may claim against the security if any of the following events occurs for fourteen (14) days or more.

(a) The Contractor is in breach of the Contract and the Employer has notified him that he is; and

71.2 The Performance Security shall be discharged by the Employer and returned to the Contractor upon issuance of Engineering certification of completion

72. Dayworks

72.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used for small additional amounts of work only when the Engineer has given written instructions in advance for additional work to be paid for in that way.

72.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Engineer. Each completed form shall be verified and signed by the Engineer within two (2) days of the work being done.

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

73. Cost of Repairs

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

E. Completion of the Contract

74. Completion

74.1 The Contractor shall request the Engineer to issue a certificate of Completion of the Works, and the Engineer will do so upon deciding that the work is completed.

75. Taking Over

75.1 The Employer shall take over the Site and the Works within seven

(7) days of the Engineer issuing a Certificate of Completion.

- 76. Final Account** 76.1 The Contractor shall supply the Engineer 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 Engineer shall issue a Defects Correction Certificate and certify any final payment that is due to the Contractor within fifty-six (56) days of receiving the Contractor's account if it is correct and complete. If it is not, the Engineer shall issue within fifty-six (56) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the Contractor and issue a payment certificate.
- 77. As-built Drawings and Manuals** 77.1 If "As Built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the SCC.
- 77.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the SCC, or they do not receive the Engineer's approval, the Engineer shall withhold the amount stated in the SCC from payments due to the Contractor

F. Termination and Settlement of Disputes

78. Termination 78.1 Termination for Default

- (a) The Employer or the Contractor, without prejudice to any other remedy for breach of Contract, by giving twenty eight (28) days written notice of default to the other party, may terminate the Contract in whole or in part if the other party causes a fundamental breach of Contract
- (b) Fundamental breaches of the Contract shall include, but shall not be limited to, the following:
 - (i) The Contractor stops work for twenty-eight (28) days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Engineer;
 - (ii) The Engineer instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within twenty-eight (28) days;
 - (iii) The Engineer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer;
 - (iv) The Contractor does not maintain a Security, which is required;
 - (v) 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 the SCC;
 - (vi) The Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices, as defined in GCC Clause 3, in competing for or in executing the Contract; and
 - (vii) A payment certified by the Engineer is not paid by the Employer to the Contractor within 120 (120) days of the date of the Engineer's certificate.

78.2 Termination for Insolvency.

The Employer and the Contractor may at any time terminate the Contract by giving notice to the other party if either of the party becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to any party, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the other party.

78.3 Termination for Convenience.

The Employer, by notice sent to the Contractor, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Employer's convenience, the extent to which performance of the Contractor under the Contract is terminated, and the date upon which such termination becomes effective.

78.4 In the event the Employer terminates the Contract in whole or in part, the Employer shall accept the portion of the Works that are complete and ready for handing over after the Contractor's receipt of notice of termination at the Contract. For the remaining portion of the Works, the Employer may elect:

- (a) To have any portion completed by the Contractor at the Contract terms and prices; and /or
- (b) To cancel the remainder and pay to the Contractor an agreed amount for partially completed Works and for materials and parts previously procured by the Contractor, or
- (c) Except in the case of termination for convenience as defined in GCC Sub-Clause 78.3, engage another Contractor to complete the Works, and in that case the Contractor shall be liable to the Employer for any cost that may be incurred in excess of the sum that would have been paid to the Contractor, if the work would have been executed and completed by him.

78.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as is reasonably possible.

- 79. Payment upon Termination**
- 79.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Engineer shall issue a certificate for the value of the work done and Plant and Materials timely and validly ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the SCC. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 79.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Engineer 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 foreign personnel employed solely on the Works and recruited specifically for 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.
- 80. Property**
- 80.1 All Materials on the SIB, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.
- 81. Frustration of Contract**
- 81.1 If the Contract is frustrated by the occurrence of a situation of Force Majeure as defined in GCC Clause 41, the Engineer shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made

82. Settlement of Disputes

82.1 Amicable Settlement

- (a) The Employer and the Contractor shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

82.2 Appointment of the Adjudicator

- (a) The Adjudicator named in the SCC is jointly appointed by the Employer and the Contractor. If the Employer and the Contractor do not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the SCC, to appoint the Adjudicator within 14 days of receipt of such request.

- (b) Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the SCC at the request of either party, within 14 days of receipt

82.3 .Procedures for Disputes:

- (a) If the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer's decision.

- (b) The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

- (c) The Adjudicator shall be paid an hourly or daily rate as specified in the SCC, together with reimbursable expenses of the types specified in the SCC, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. The Contractor shall make all payments (fees and reimbursable expenses) to the Adjudicator, and the Employer shall reimburse half of these payments through the regular progress payments. Either party may refer a decision of the Adjudicator to Arbitration in accordance with GCC Sub-Clause 82.4 within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.

82.4 Arbitration

The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act currently in force in Nigeria and in the place shown in the SCC. .

Section 4. Special Conditions of Contract

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| <i>Instructions for completing the Special Conditions of Contract are provided, as needed, in the notes in italics mentioned for the relevant GCC Clauses.</i> | |
| GCC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
| GCC 1.1(h) | The Contractor is <i>[Name, address, and name of authorized representative]</i> . |
| GCC 1.1(q) | The Employer is <i>[Name, address, and name of authorized representative]</i> . |
| GCC 1.1(r) | The Engineer is <i>[Name, address, and name of authorized representative]</i> . |
| GCC 1.1(w) | The Intended Completion Date for the whole of the Works shall be <i>[insert date]</i> . |
| GCC 1.1(ac) | The Site is located at <i>[location]</i> and is defined in drawings No: <i>[insert numbers]</i> |
| GCC 1.1(af) | The Start Date shall be <i>[insert date of events]</i> . |
| GCC 1.1(aj) | The Works consist of <i>[brief summary, including relationship to other Contracts under the Project]</i> . |
| GCC 4.5 | The Sectional Completion Dates are: |
| GCC 5.1(i) | The following documents also form part of the Contract: <i>[list documents]</i> 16.1 Schedule of Other Contractors 24.1 The Schedule of Key Personnel 27.1 Site Investigation Reports <i>[Mention any other documents]</i> |
| GCC 6.1 | Contractors that are a national of, or registered in, the following countries are not eligible: |
| GCC 6.2 | Materials/equipment/plant shall not be supplied from the following as country of origin: |

| | | | | | |
|-----------------|--|-----|---|-----|--|
| GCC 16.1 | Schedule of other Contractors [Insert Schedule of other contractors, if appropriate] | | | | |
| GCC 12.1 | The Employer's address for the purpose of communications under this contract is : | | | | |
| GCC 21.1 | <p>The Engineer shall obtain specific approval of the Employer before taking any of the following actions:</p> <ul style="list-style-type: none"> (a) Consenting to the subcontracting of any part of the Works under GCC Clause 15; (b) Certifying additional cost determined under GCC Clause 64; (c) Determining an extension of time under GCC Clause 46; (d) Issuing a variation under GCC Clause 60, except in an emergency situation, as reasonably determined by the Engineer; (e) Fixing rates or prices under GCC Clause 60. | | | | |
| GCC 24.1 | Schedule of key personnel is as follows: | | | | |
| GCC 27.1 | Site Investigation Reports consist of: | | | | |
| GCC 28.1 | <p>The Site Possession Date shall be <i>[location]</i>.</p> <p>If the site is composed of a number of locations, then indicate the date for each location.</p> | | | | |
| GCC 38.1 | <p>The minimum insurance cover shall be:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center; vertical-align: top;">(a)</td> <td>The maximum deductible for insurance of the Works and of Plant and Materials is Naira <i>[amount]</i> <i>[the Contractor shall provide this amount at the time of Contract signing].</i></td> </tr> <tr> <td style="width: 5%; text-align: center; vertical-align: top;">(b)</td> <td>The minimum cover for insurance of the Works and of Plant and Materials in respect of the Contractor's faulty design is Naira <i>[amount]</i>. <i>[the amount could be 110% of the value of the works, plant and materials that may be lost in a worst case scenario].</i></td> </tr> </table> | (a) | The maximum deductible for insurance of the Works and of Plant and Materials is Naira <i>[amount]</i> <i>[the Contractor shall provide this amount at the time of Contract signing].</i> | (b) | The minimum cover for insurance of the Works and of Plant and Materials in respect of the Contractor's faulty design is Naira <i>[amount]</i> . <i>[the amount could be 110% of the value of the works, plant and materials that may be lost in a worst case scenario].</i> |
| (a) | The maximum deductible for insurance of the Works and of Plant and Materials is Naira <i>[amount]</i> <i>[the Contractor shall provide this amount at the time of Contract signing].</i> | | | | |
| (b) | The minimum cover for insurance of the Works and of Plant and Materials in respect of the Contractor's faulty design is Naira <i>[amount]</i> . <i>[the amount could be 110% of the value of the works, plant and materials that may be lost in a worst case scenario].</i> | | | | |

| | |
|-----------------|---|
| | (c) The maximum deductible for insurance of Equipment is Naira [amount]. <i>[the Contractor shall provide this amount at the time of Contract signing].</i> |
| | (d) The minimum cover for loss or damage to Equipment is Naira [amount]. <i>[the amount could be 110% of the replacement value of the equipment]</i> |
| | (e) The maximum deductible for insurance of other property is Naira [amount]. <i>[the Contractor shall provide this amount at the time of Contract signing].</i> |
| | (f) The minimum cover for insurance of other property is Naira [amount]. <i>[it is the responsibility of the Contractor to obtain adequate insurance cover for such risks – recommended value 10% of contract price].</i> |
| | (g) The minimum cover for personal injury or death insurance: (i) for the Contractor’s employees is as per the law and common practice in Nigeria. (ii) and for third parties is as per the law and common practice in Nigeria. |
| GCC 43.1 | The Contractor shall submit a Programme for the Works within [number] days of signing the Contract. |
| GCC 43.2 | The period between Programme updates is [number] days. |
| GCC 43.3 | The amount to be withheld for late submission of an updated Programme is [amount] |
| GCC 55.1 | The Defects Liability Period is [number] days. <i>[usually the defect liability period is 12 months .</i> |
| GCC 63.1 | The interest on delayed payments shall beper annum[usually equal to or two per cent lower or higher than CBN minimum re-discount rate) |

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|--------------------|--|
| GCC 64.1(m) | The following events shall also be Compensation Events: <i>[list events]</i> |
| GCC 66.1 | <p>The Contract is not subject to price adjustment.</p> <p>OR</p> <p>The Contract is subject to price adjustment, the coefficients for adjustment are:</p> <p><i>[Figure]</i> non-adjustable element (coefficient A)</p> <p><i>[Figure]</i> adjustable element (coefficient b, c, d,...)</p> $P = [A + b Ln/Lo + c Mn/Mo + d En/Eo + \dots]$ <p>$A + b + c + d = 1$ (Please delete one)</p> |
| GCC 67.1 | <p>The proportion of payments retained is <i>[percent]</i> percent.</p> <p><i>[the retention money is usually five (5) percent. If combined with a performance security, the total amount should not exceed fifteen (15) percent of the Contract Price.]</i>.</p> |
| GCC 68.1 | <p>The liquidated damages for the whole of the Works are <i>[percentage of the final Contract Price]</i> per day.</p> <p>The maximum amount of liquidated damages for the whole of the Works is <i>[percent]</i> percent of the final Contract Price.</p> <p><i>[usually, liquidated damages are set between 0.05 of one percent and 0.10 of one percent per day (or half of one percent per week of delay) and the total amount is not to exceed 10 percent of the Contract Price.]</i></p> |
| GCC 69.1 | <p>The Bonus for the whole of the Works is <i>[percent of final Contract Price]</i> per day.</p> <p>The maximum amount of Bonus for the whole of the Works is <i>[percent]</i> percent of the final Contract Price.</p> <p><i>[if early completion would provide benefits to the Employer, this clause should remain, otherwise state "Not Applicable" Bonus should be used only for revenue generating projects].</i></p> |
| GCC 70.1 | <p>The Advance Payment will be <i>[insert amount]</i> and will be paid to the Contractor not later than <i>[insert date]</i>.</p> <p><i>[usually, an advance payment is made for mobilisation, if admissible to the Employer considering the nature of the works. The recommended maximum advance is 10% of the Contract Price against an unconditional bank guarantee (Form W-7).though the law allows up to 15% of contract value. The procuring entity should amend this clause as required for the</i></p> |

| | |
|---|---|
| GCC 70.3 | <p><i>particular procurement.]</i></p> <p>The advance payment is to be repaid in pro rata instalments starting with the month when up to 20% of the value of the contract has been certified and shall be completely reimbursed to the Employer by the time the certified completion is 80% of the Contract Price.</p> |
| GCC 77.1 | <p>The date by which “as-built” drawings are required is <i>[date]</i>.</p> <p>The date by which operating and maintenance manuals are required is <i>[date]</i>.</p> |
| GCC 77.2 | <p>The amount to be withheld for failing to produce “as-built” drawings and/or operating and maintenance manuals by the date required is <i>[amount in Naira]</i>.</p> |
| GCC 79.1 | <p>The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is <i>[percent]</i>.</p> |
| <p>GCC 82.1(a)() & 82.1(b)() 82.2(c)</p> <p>GCC 82.3(b)</p> | <p>The Adjudicator jointly appointed by the parties is <i>(name and address of the Adjudicator)</i></p> <p><i>Reimbursable expenses of the Adjudicator are transportation, lodging, and subsistence during travel to site</i></p> <p><i>In case of disagreement between the parties, the Appointing Authority for the Adjudicator is the Delta State Branch Chairman of the Nigerian Society of Engineers</i></p> <p><i>Place of arbitration will be:</i></p> |

Section 5. Bid and Contract Forms

| Form | Title |
|------|-------|
|------|-------|

Bid Forms

| | |
|-------|---------------------------------|
| W – 1 | Bid Submission Sheet |
| W – 2 | Bidder Information Sheet |
| W – 3 | Bank Guarantee for Bid Security |

Contract Forms

| | |
|-------|---|
| W – 4 | Notification of Award |
| W – 5 | Contract Agreement |
| W – 6 | Bank Guarantee for Performance Security |
| W – 7 | Bank Guarantee for Advance Payment |

Forms W1 to W3 comprise part of the Bid Format and should be completed as stated in ITB Clauses 19 and 20.

Forms W4 to W7 comprise part of the Contract as stated in GCC Clause 5.

Bid Submission Sheet (Form W-1)

Invitation for Bid No:

Date:

Bid Package No:

To:

[Name and address of Employer]

We, the undersigned, offer to execute in conformity with the Conditions of Contract and associated Contract Documents, the following Works and Related Services, viz:

The total price of our Bid is:

Naira:

*[insert value in [insert value in Words]
figures)*

If applicable under ITB Sub-Clause 22.6, in case we are awarded a Contract for more than one lot in the package, the discount/cross-discount offered and the methodology for its application is:

Our Bid shall be valid for the period stated in the Special Instructions to Bidders and it shall remain binding upon us and may be accepted at any time before the expiration of that period. A Bid Security in the amount stated in the Special Instructions to Bidders is attached in the form of a *[state pay order, bank draft, bank guarantee]* valid for a period of 28 days beyond the Bid validity date.

If our Bid is accepted, we commit to obtaining a Performance Security in the amount stated in the Special Instructions to Bidders and valid for a period of 28 days beyond the date of issue of the Certificate of Completion of Works.

We declare that ourselves, and any Subcontractors or Contractors for any part of the Contract, have nationalities from eligible countries and that the materials, equipment and related services will also be supplied from eligible countries. We also declare that the Governments of Delta State and or Nigeria has not declared us, and any Subcontractors or Contractors for any part of the Contract ineligible on charges of engaging in corrupt, fraudulent, collusive or coercive practices. Furthermore, we are aware of ITB Clause 3 concerning this and pledge not to indulge in such practices in competing for or in executing the Contract.

We are not participating as Bidders in more than one Bid in this Bidding process. We understand that your written Notification of Award shall constitute the acceptance of our Bid and shall become a binding Contract between us, until a formal Contract is prepared and executed.

We understand that you are not bound to accept the lowest evaluated responsive Bid or any other Bid that you may receive.

Signed

In the capacity of:

Duly authorised to sign the Bid on behalf of the Bidder.

Bidder Information Sheet (Form W-2)

Notes on Bidder Information Sheet

This note is for information only to assist the procuring entity in the completion of the Form when preparing the Bid Document, but this note should not be included in the issued Bid Document.

The information to be filled in by Bidders in the following pages will be used for purposes of verification of eligibility and qualification of the Bidder as provided for in relevant Clauses of the Instructions to Bidders. The Bidder, if prequalified earlier, should complete updated information only

| | | | |
|------------------------|--|------|--|
| Invitation for Bid No: | | Date | |
| Bid Package No: | | | |

A. Individual Bidders

| | | |
|---|---|--|
| 1. General Information of the Bidder | | |
| 1.1 | Bidder's Legal Name | |
| 1.2 | Bidder's legal address in Country of Registration | |
| 1.3 | Bidder's legal status | |
| | Proprietorship | |
| | Partnership | |
| | | |

| | | | | |
|---|--|---|---|--------------------------------------|
| | Limited Liability Company (Registered under the Companies Others | | | |
| 1.4 | Bidder's Year of Registration | | | |
| 1.5 | Bidder's Authorised Representative Information | | | |
| | Name | | | |
| | Address | | | |
| | Telephone / Fax Numbers | | | |
| | e-mail address | | | |
| 1.6 | Bidder's Value Added Tax Registration Number | | | |
| 1.7 | Bidder's Income Tax Identification Number (TIN) | | | |
| 1.9 | Bidder to attach copies of following documentation: | (a) Articles of Incorporation or Registration of firm. | (b) Latest Income Tax Clearance Certificate | (c) Latest VAT Clearance Certificate |
| | | (d) Original letter naming the person authorised to sign on behalf of the Bidder. | | |
| 2. Qualification Information of the Bidder | | | | |
| General and Specific Experience | | | | |
| 2.1 | Total annual volume of construction work performed in the last five years | | | |
| 2.2 | Work performed as prime Contractor on works of a similar nature and volume over the last five years. Also list details of work underway or committed, including | | | |
| | Project Name | Name of Employer and contact person | Type of work performed and year of completion | Value of Contract (Naira) |
| | (a) | | | |
| | (b) | | | |
| | (c) | | | |
| Information on Equipment | | | | |

| | | | | |
|--|--|-----------------------------------|---|--|
| 2.3 | Major items of Contractor's Equipment proposed for carrying out the works. List all information requested below. Refer also to ITB Sub-Clause 14.1 | | | |
| | Item of equipment | Description, make and age (years) | Condition (new, good, average, poor) and quantity | Owned, leased (from whom?) or to be purchased (from whom?) |
| | (a) | | | |
| | (b) | | | |
| | (c) | | | |
| <i>Personnel Information</i> | | | | |
| 2.4 | Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to ITB Sub-Clause 13.1 and GCC Sub-Clause 24.1 | | | |
| | Position | Name | Years of Experience | Years of Experience (in |
| | (a) | | | |
| | (b) | | | |
| | (c) | | | |
| <i>Information on Sub-contractors</i> | | | | |
| 2.5 | Proposed Sub-contractors and firms to be involved. Refer to GCC Clause 15 | | | |
| | Section of the Works | Value of the Subcontract | Subcontractor (Name and address) | Experience in similar work |
| | (a) | | | |
| | (b) | | | |
| | (c) | | | |
| 3. <i>Financial Information of the Bidder</i> | | | | |
| 3.1 | Financial reports or balance sheets or profit and loss statements or auditors' reports, bank account statements and bank references for the past (5 years) with documents or a combination of these demonstrating availability of liquid assets. List below and attach copies. | | | |
| 3.2 | Evidence of access to financial resources to meet the qualification requirements, liquid assets, lines of credit, etc. List below and attach copies of supporting documents. | | | |

| | | |
|---|---|---------------------------------|
| 3.3 | Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the Employer. | |
| 3.4 | Information on litigation in which the Bidder is, or has been, involved: | |
| | (a) Any contract not performed during the past three years prior to the deadline for Bid submission: Non-performance of a contract did not occur within the last three (3) years prior to the deadline for Bid submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the bidder have been exhausted. And(b) pending litigation: list all pending litigation and amounts claimed. | |
| | Cause of Dispute | Result of Settlement and amount |
| | | |
| | (b) Pending litigation: list all pending litigation and amounts claimed. (Current cases in this financial year[previous text]) | |
| | Cause of Dispute | Current Position of Case |
| | Amount involved | Naira |
| <i>Note: The above represents the minimum requirements. These may be added to by the Employer on a case-by-case basis, as necessary. Consideration:</i> | | |

B. Individual Members of a Joint Venture

| | |
|-----|--|
| 4.1 | Each Member of a JVA shall provide all the information requested in the form above, Sections 1-3. |
| 4.2 | Attach a power of attorney for each of the authorising signatories of the Bid on behalf of the JVA. |
| 4.3 | Attach the Agreement among all Members of the JVA (and which is legally binding on all Members), which shows that: <ul style="list-style-type: none"> (a) all Members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms; (b) one of the Members will be nominated as being in charge, authorised to incur liabilities, and receive instructions for and on behalf of any and all Members of the joint venture; and (c) the execution of the entire Contract, including payment, shall be done exclusively with the Member in charge |

Note: The above represents the minimum requirements. These may be added to by the Employer on a case-by-case basis, as necessary.

Bank Guarantee for Bid Security (Form W-3)

*[this is the format for the Bid Security to be issued by a Bank
Acceptable to the Employer in accordance with ITB Clause 30]*

Invitation for Bid No:

Date:

Bid Package No:

To:

[Name and address of Employer]

BID GUARANTEE (BID SECURITY)No:

We have been informed that *[name of Bidder]* (hereinafter called “the Bidder”) intends to submit to you its Bid dated *[date of Bid]* (hereinafter called “the Bid”) for the execution of the Works of *[description of works]* under the above Invitation for Bids (hereinafter called “the ITB”).

Furthermore, we understand that, according to your conditions Bids must be supported by a Bid Guarantee.

At the request of the Bidder, we *[name of bank]* hereby irrevocably undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of Naira *[insert amount in figures and words]* upon receipt by us of your first written demand accompanied by a written statement that the Bidder is in breach of its obligation(s) under the Bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of Bid validity specified by the Bidder in the appropriate Bid forms; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bid Bidders as contained in the ITB ; or
- (c) having been notified of the acceptance of the Bid by the Employer during the period of Bid validity, (i) fails or refuses to furnish the Performance Security in accordance with the ITB, or (ii) fails or refuses to execute the Contract Form,

This guarantee will expire

- (a) if the Bidder is the successful Bidder, upon our receipt of a copy of the Performance Security and a copy of the Contract signed by the Bidder as issued by you; or

- (b) if the Bidder is not the successful Bidder, twenty eight days after the expiration of the Bidder's Bid validity period, being *[date of expiration of the Bid]*.

Consequently, we must receive at the above-mentioned office any demand for payment under this guarantee on or before that date.

.

Signature

Signature

Notification of Award (Form W-4)

Contract No:
To:

Date:

[Name of Contractor]

This is to notify you that your Bid dated *[insert date]* for the execution of the Works for *[name of project/Contract]* for the Contract Price of Naira *[amount in figures and in words]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by *[name of Employer]*.

You are requested to proceed with the execution of the Works on the basis that this Notification of Award shall constitute the formation of a Contract, which shall become binding upon your furnishing a Performance Security within fourteen (14) days, in accordance with ITB Clause 53, and signing the Contract Agreement within twenty-one (21) days, in accordance with ITB Clause 54.

We attach the Contract Agreement and Special Conditions of Contract for your perusal and signature.

Signed

Duly authorised to sign for and on behalf
of *[name of Procuring Entity]*

Date:

Contract Agreement (Form W-5)

THIS AGREEMENT made the *[day]* day of *[month]**[year]* between *[name and address of Employer]* (hereinafter called “the Employer”) of the one part and *[name and address of Contractor]* (hereinafter called “the Contractor”) of the other part:

WHEREAS the Employer invited Bids for certain works, viz, *[brief description of works]* and has accepted a Bid by the Contractor for the execution of those works in the sum of *Naira [Contract price in figures and in words]* (hereinafter called “the Contract Price”).

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 hereafter referred to.
2. The documents forming the Contract shall be interpreted in the following order of priority:
 - a. the signed Contract Agreement;
 - b. the letter of Notification of Award
 - c. the completed Bid Submission Sheet as submitted by the Bidder;
 - d. the priced Bill of Quantities as submitted by the Bidder;
 - e. the Special Conditions of Contract;
 - f. the General Conditions of Contract;
 - g. the Particular and General Specifications;
 - h. the Drawings, and;
 - i. any other document listed in the SCC as forming part of the Contract.
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the works and to remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Delta State of Nigeria on the day, month and year first written above

For the Employer:

For the Contractor:

Signature

Print Name

Title

In the presence
of
Name

Address

Bank Guarantee for Performance Security (Form W-6)

[this is the format for the Performance Security to be issued by a Bank acceptable to the Employer in accordance with ITB Clause 53]

Contract No:

Date:

To:

[Name and address of Employer]

PERFORMANCE GUARANTEE (BOND) No:

We have been informed that *[name of Contractor]* (hereinafter called “the Contractor”) has undertaken, pursuant to Contract No *[reference number of Contract]* dated *[date of Contract]* (hereinafter called “the Contract”), the execution of works *[description of works]* under the Contract.

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

At the request of the Contractor, we *[name of bank]* hereby irrevocably undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of Naira *[insert amount in figures and in words]* upon receipt by us of your first written demand accompanied by a written statement that the Contractor is in breach of its obligation(s) under the Contract conditions, without you needing to prove or show grounds or reasons for your demand of the sum specified therein.

This guarantee is valid until *[date of validity of guarantee]*, consequently, we must receive at the above-mentioned office any demand for payment under this guarantee on or before that date.

Signature

Signature

Bank Guarantee for Advance Payment (Form W-7)

[this is the format for the Advance Payment Guarantee to be issued by a commercial bank of Nigeria in accordance with SCC Clause 70]

Contract No:

Date:

To:

[Name and address of Employer]

ADVANCE PAYMENT GUARANTEE (BOND) No:

We have been informed that *[name of Contractor]* (hereinafter called “the Contractor”) has undertaken, pursuant to Contract No *[reference number of Contract]* dated *[date of Contract]* (hereinafter called “the Contract”), the execution of works *[description of works]* under the Contract.

Furthermore, we understand that, according to your conditions, Advance Payments must be supported by a bank guarantee.

At the request of the Contractor, we *[name of bank]* hereby irrevocably undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of Naira *[insert amount in figures and in words]* upon receipt by us of your first written demand accompanied by a written statement that the Contractor is in breach of its obligation(s) under the Contract conditions, without you needing to prove or show grounds or reasons for your demand of the sum specified therein.

We further agree that no change, addition or other modification of the terms of the Contract to be performed, or of any of the Contract documents which may be made between the Employer 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 is valid until *[date of validity of guarantee]*, consequently, we must receive at the above-mentioned office any demand for payment under this guarantee on or before that date.

Signature

Signature

Insurance Bond for Advance Payment (Form W-8)

[this is the format for the Advance Payment Guarantee to be issued by a registered Insurance company in the list of insurance companies acceptable to the Procuring Entity].

Contract No:

Date:

To:

[Name and address of Client]

INSURANCE BOND No:

We have been informed that [name of Contractor] [hereinafter called “the Contractor”] has entered into Contract No. [reference number of the Contract] dated [insert date] with you, for the purposes of [insert brief description of contract] (hereinafter called” the Contract).

Furthermore, we understand that according to the conditions of the contract, a mobilization fee (advance payment) in the sum of [amount in figures] ([amount in figures]) is to be made against an insurance bond.

At the request of the Contractor, we (name of insurance company [Surety]) and the Contractor by this BOND are held firmly bound unto [insert name of the procuring entity (Client)] in the sum of [amount in figures and currency and in words) for the payment of which sum the Contractor and the surety bind themselves, their assigns jointly and severally by this agreement, and notwithstanding any contestation by the Contractor.

The Conditions of the Bond above are as follows-

1. If on default by the Contractor declared in writing to the Surety by the Client, the Surety shall without any further evidence, at sight of a demand from (Insert name of procuring entity/Client) pay and discharge the liquidated damages claimed by the Client thereby up to the amount stated above
2. The Surety agrees that no change, addition or other modification of the terms of the contract to be performed or any of the Contract documents which may be made between the Client and the Contractor shall in any way discharge them from any liability under this Bond, and hereby waives notice of any such change, addition or modification.
3. The maximum amount of this bond shall be progressively reduced by the amount of the mobilization payment repaid by the Contractor as indicated in copies of certified monthly statements (Reports or any other milestone indicator) which shall be presented to us(Surety)
4. This Bond is valid until [date of validity of bond], consequently we must receive at the above mentioned office any demand for payment under this bond on or before that date.

Signature

Signature

Section 6. Bill of Quantities

Notes on the Bill of Quantities

Objectives

The objectives of the Bill of Quantities (BOQ) 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 (BOQ) for use in the periodic valuation of Works executed.

In order to attain these objectives, Works should be itemized in the (BOQ) 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 (BOQ) should be as simple and brief as possible.

Daywork Schedule

A Daywork Schedule should be included only if the probability of unforeseen work, outside the items included in the (BOQ), is high. To facilitate checking by the Employer of the realism of rates quoted by the Bidders, the Daywork Schedule should normally comprise the following:

- (a) a list of the various classes of labour, materials, and construction 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 Bid. 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

A general provision for physical contingencies (quantity overruns) may be made by including a provisional sum in the Summary Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a provisional sum in the Summary Bill of Quantities. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arise. Where such provisional sums or contingency allowances are used,

the SCC should state the manner in which they will be used, and under whose authority (usually the Engineer's).

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by other Contractors should be indicated in the relevant part of the Bill of Quantities as a particular provisional sum with an appropriate brief description. A separate procurement procedure is normally carried out by the Employer to select such specialized Contractors. To provide an element of competition among the Bidders in respect of any facilities, amenities, facilities, 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 should be followed by an item in the Bill of Quantities inviting the Bidder to quote a sum for such amenities, facilities, attendance, etc.

Correction of Errors

If in preparing its Bid, the Bidder has made errors in the unit price or the total price, and wishes to correct such errors prior to submission of its Bid, it may do so, but shall ensure that each correction is suitable initialled by the authorised person of the Bidder and that a statement shall be made as to the total number of corrections made, at the end of the priced Bill of Quantities.

The Employer must ensure that the following note is added at the end of every Bill of Quantity.

“This Bill of Quantity contains [state number] corrections or errors, duly initialled and signed by the authorised person of the Bidder”].

These notes for preparing a Bill of Quantities are intended only as information for the Employer or the person drafting the Bid document. They should not be included in the final documents.

Section 7. General Specifications

Notes on Specifications

A set of precise and clear specifications is a prerequisite for Bidders to respond realistically and competitively to the requirements of the Employer without introducing deviations or conditionalities in their Bids. In the context of state or national competitive Bidding, the specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the works to be procured. Only if this is done will the objectives of economy, efficiency, and fairness in procurement be realized, responsiveness of Bids be ensured, and the subsequent task of Bid evaluation facilitated. The specifications should require that all goods and materials to be incorporated in the Works be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

Samples of specifications from previous similar projects are useful in this respect. Most specifications are normally written specially by the Employer or Engineer to suit the Contract Works in hand. There is no standard set of Specifications for universal application in all sectors, but there are established principles and practices, which are reflected in these documents.

There are considerable advantages in standardizing General Specifications for repetitive Works in recognized public sectors, such as highways, ports, railways, urban housing, irrigation, and water supply, where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly used in construction, although not necessarily to be used in a particular Works Contract. Deletions or addenda should then adapt the General Specifications to the particular Works. Such General Specifications are those issued by the specialised ministries/professional bodies in Nigeria and/or those of the International Standards Organisation (ISO)

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

Sample Clause: Equivalency of Standards and Codes

Wherever reference is made in the Contract to specific standards and codes to be met by the goods and materials to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract.

These notes for preparing Specifications are intended only as information for the Employer or the person drafting the Bid document. They should not be included in the final documents.

Section 8. Particular Specifications

Notes on Particular Specifications

If an item of the Works is not covered in the General Specifications or if any specification clause requires that further details as to precise requirements for the particular Works are to be given or needs to be modified or clarified then these should be reflected in the Particular Specifications. Where the Particular Specification clause replaces or clarifies an existing clause of the General Specification then the same clause numbering system need to be followed.

Section 9. Drawings

Notes on Drawings

Insert here a list of Drawings. The actual Drawings, including site plans, should be attached to this section or annexed in a separate folder. The Drawings shall be dated, numbered and show the revision number.