

**Notice of Invitation for Bids**

**Project Title:** Construction of Asphalt Road from Kabul Gardiz Highway to Aynak Mine (1+500 to 8+900)

**Ref. No.:** *MCC-JCL/2024/W-001/NCB*

**Project ID:**

**RFB No.:** MCC-JCL/2024/W-001/NCB

**Project:** Construction of Asphalt Road from Kabul Gardiz Highway to Aynak Mine (1+500 to 8+900)

**Purchaser:** MCC-JCL Aynak Minerals Company Limited.

**Country:** Afghanistan

**Issued on: June 15**, 2024

**Summary Documentation**

**SBD for Procurement of Small Works**

**Part I– Tendering Procedures**

**Section I. Instructions to Bidders (ITB)**

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

**Section II. Bid Data Sheet (BDS)**

This Section includes provisions specific to each procurement and supplements to Section I (Instructions to Bidders).

**Section III. Evaluation and Qualification Criteria**

This Section includes the criteria for determining the lowest evaluated bid and the qualifications of Bidders to perform the Contract.

**Section IV. Bidding Forms**

This Section includes forms to be completed by the Bidders and submitted as part of their bids.

**Section V. Eligible Countries**

This Section contains information regarding eligible countries.

**Part II – Works Requirements**

**Section VII. Works Requirements**

This Section contains specifications, drawings, and supplementary information that describe the Works to be procured. The Works Requirements shall also include environmental, social, health and safety (ESHS) requirements to be satisfied by the Contractor in executing the Works.

***Part III – Conditions and Forms of Contract***

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

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

**Section IX. Particular Conditions of Contract (PCC)**

This Section consists of contract data and specific provisions which contain clauses specific to each contract. The contents of this Section can be modified or supplemented, but cannot be over-written, and shall be prepared by the Employer.

**Section X. Contract Forms**

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security shall only be completed by the successful Bidder after contract award.

**Attachment: Invitation for Bids**

An “Invitation for Bids” form is provided at the end of the Tendering Document for reference.

Standard Tendering Document

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PART I – Tendering Procedures

Section I - Instructions to Bidders

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**Section I - Instructions to Bidders**

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| 1. General
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| 1. Scope of Bid
 | In connection with the Invitation for Bids specified in the Bid Data Sheet (BDS), the Employer, as specified in the BDS, issues this Tendering Document for the procurement of the Works as specified in Section VII (Works Requirements). The name, and identification of this bidding are specified in the BDS. |
|  | Throughout this Tendering Document:* + 1. (a) the term “in writing” means communication in written form and delivery against receipt;
		2. (b) unless the context otherwise requires, words indicating the singular also include the plural and words indicating the plural also include the singular; and
		3. (c) “day” means calendar day.
 |
| 1. Source of Funds
 | The works in the BDS are self-funded. |
| 1. Eligible Bidders
 | A Bidder may be a private entity, subject to ITB 3.5—or form of a joint venture (JV), under an existing agreement, or with the intent to enter into such an agreement supported by a letter of intent.  |
|  | A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this tendering process, if the Bidder: * + 1. directly or indirectly controls, is controlled by or is under common control with another Bidder; or
		2. receives or has received any direct or indirect subsidy from another Bidder; or
		3. has the same legal representative as another Bidder; or
		4. has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Employer regarding this tendering process; or
		5. participates in more than one bid in this tendering process. Participation by a Bidder in more than one Bid will result in its disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
		6. or any of its affiliates participating as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid; or
		7. would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm;
 |
|  | A Bidder may have the nationality of Afghanistan. A Bidder shall be deemed to have the nationality of Afghanistan if the Bidder is constituted, incorporated or registered in conformity with the provisions of the laws of Afghanistan, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract, including related services.  |
|  | A Bidder shall not be under suspension from bidding by the Employer as the result of the operation of a Bid–Securing Declaration. |
|  | A Bidder shall provide such evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request. |
| 1. Eligible Materials, Equipment and Services
 | The materials, equipment and services to be supplied under the Contract may have their origin in any country subject to the restrictions, and all expenditures under the Contract will not contravene such restrictions. Bidders may be required by the Employer to provide evidence of the origin of materials, equipment and services. |
| 1. Contents of Tendering Document
 |
| 1. Sections of Tendering Document
 | The Tendering Document consists of Parts I, II*,* and III*,* which include all the Sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITB 8.**PART 1 Tendering Procedures**Section I - Instructions to Bidders (ITB)Section II - Bid Data Sheet (BDS)Section III - Evaluation and Qualification Criteria Section IV - Bidding Forms Section V - Eligible Countries **PART 2 Works Requirements**Section VII - Works Requirements **PART 3 Conditions and Forms of Contract**Section VIII - General Conditions of Contract (GCC)Section IX - Particular Conditions of Contract (PCC)Section X - Contract Forms  |
|  | The Invitation for Bids issued by the Employer is not part of the Tendering Document. |
|  | Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Tendering Document, responses to requests for clarification, the minutes of the pre-bid meeting (if any), or Addenda to the Tendering Document. In case of any contradiction, documents obtained directly from the Employer shall prevail. |
|  | The Bidder is expected to examine all instructions, forms, terms, and specifications in the Tendering Document and to furnish with its bid all information and documentation as is required by the Tendering Document. |
| 1. Clarification of Tendering Document, Site Visit, Pre-Bid Meeting
 | A Bidder requiring any clarification of the Tendering Document shall contact the Employer in writing at the Employer’s address specified in the BDS or raise its inquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids within a period specified in the BDS. The Employer shall forward copies of its response to all Bidders who have acquired the Tendering Document. |
|  | The Bidder is advised to visit and examine the site of the Works and its surroundings and to obtain for itself on its own responsibility all information that may be necessary for preparing its bid and entering into a contract for construction of the Works. The costs of visiting the site shall be at the Bidder’s own expense. |
|  | The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection. |
|   | If so specified in the BDS, the Bidder’s designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. |
|  | The Bidder is requested to submit any questions in writing, to reach the Employer not later than four days before the submission deadline. |
|  | Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Tendering Document in accordance with ITB 6.3. Any modification to the Tendering Document 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 8 and not through the minutes of the pre-bid meeting. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder. |
| 1. Amendment to Tendering Document
 | At any time prior to the deadline for submission of bids, the Employer may amend the Tendering Document by issuing addenda.  |
|  | Any addendum issued shall be part of the Tendering Document and shall be communicated in writing to all who have obtained the Tendering Document from the Employer in accordance with ITB 5.2.  |
|  | To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids according to ITB 21.2. |
| 1. Preparation for Bids
 |
| 1. Cost of Bidding
 | The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process. |
| 1. Language of Bid
 | The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language specified in the BDS. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern. |
| 1. Documents Comprising the Bid
 | The Bid shall comprise the following:1. Letter of Bid in accordance with ITB 11;
2. Completed Schedules, in accordance with ITB 11 and 13: as specified in the BDS;
3. Bid Security or Line of Credit in accordance with ITB 18.1;
4. Alternative bids, if permissible, in accordance with ITB 12;
5. Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 19.2;
6. documentary evidence in accordance with ITB 16 establishing the Bidder’s qualifications to perform the contract if its Bid is accepted;
7. Technical Proposal in accordance with ITB 15; and
8. another documents required in the BDS.

In addition to the requirements under ITB 10.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement.The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid. |
| 1. Letter of Bid and Schedules
 | The Letter of Bid and Schedules shall be prepared using the relevant forms furnished in Section IV (Bidding Forms). The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 19.2. All blank spaces shall be filled in with the information requested. |
| 1. Alternative Bids
 | Unless otherwise specified in the BDS, alternative bids shall not be considered.  |
|  | When alternative times for completion are explicitly invited, a statement to that effect will be included in the BDS, aswill the method of evaluating different times for completion. |
|  | Except as provided under ITB 12.4 below, Bidders wishing to offer technical alternatives to the requirements of the Tendering Document must first price the Employer’s design as described in the Tendering Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer. |
|  | When specified in the BDS, the Bidders are permitted to submit alternative technical solutions for specified parts of the Works. Such parts will be identified in the BDS and described in Section VII (Works Requirements). The method for their evaluation will be stipulated in Section III (Evaluation and Qualification Criteria). |
| 1. Bid Prices and Discounts
 | The prices and discounts (including any price reduction) quoted by the Bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified below. |
|  |  The Bidder shall submit a bid for the whole of the works described in ITB 1.1 by filling in prices for all items of the Works, as identified in Section IV (Bidding Forms). In case of admeasurement contracts, the Bidder shall fill in the rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities. |
|  | The price to be quoted in the Letter of Bid, in accordance with ITB 11.1, shall be the total price of the bid, excluding any discounts offered.  |
|  | The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid, in accordance with ITB 11.1. |
|  | Unless otherwise provided in the BDS and the Conditions of Contract, the prices quoted by the Bidder shall be fixed. If the prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, the Bidder shall furnish the indices and weightings for the price adjustment formulated in the Schedule of Adjustment Data in Section IV(Bidding Forms), and the Employer may require the Bidder to justify its proposed indices and weightings.If so specified in ITB 1.1, bids are invited for individual lots (contracts)or for any combination of lots (packages). Bidders wishing to offer discounts for the award of more than one Contract shall specify in their bids the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 13.4, provided the bids for all lots (contracts) are opened at the same time. |
|  | All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, shall be included in the lam sum total bid price submitted by the Bidder. |
| 1. Currencies of Bid and Payment
 | The currency(ies) of the bid and the currency(ies) of payments shall be as specified in the BDS. |
| 1. Documents Comprising the Technical Proposal
 | The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV (Bidding Forms) in sufficient detail to demonstrate the adequacy of the Bidders’ proposal to meet the work requirements and the completion time.  |
| 1. Documents Establishing the Qualifications of the Bidder
 | In accordance with Section III (Evaluation and Qualification Criteria), to establish its qualifications to perform the Contract, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV (Bidding Forms). |
|  | If a margin of preference applies as specified in accordance with ITB 32.1, domestic Bidders, individually applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITB 32.1. |
| 1. Period of Validity of Bids
 | Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Employer in accordance with ITB 22.1. A bid valid for a short period shall be rejected by the Employer as nonresponsive. |
|  | In exceptional circumstances, the Employer may request Bidders to extend the period of validity of their bids prior to the expiration of the bid validity period. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3. |
|  | If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be determined as follows: * + 1. In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor specified in the BDS.
		2. In the case of adjustable price contracts, no adjustment shall be made.
		3. In any case, bid evaluation shall be based on the bid price without taking the applicable correction from those indicated above into consideration.
 |
| 1. Bid Security
 | The Bidder shall furnish as part of its bid, either a Bid-Securing Declaration or a bid security as specified in the BDS, in original form and, in the case of a bid security, in the amount and currency specified in the BDS. |
|  | 18.2 If a bid security is specified pursuant to ITB 18.1*,* the bid security shall be a demand guarantee in any of the following forms at the Bidder’s option:(a) an unconditional guarantee issued by a bank,(b) an irrevocable letter of credit, and(c) another security specified in the BDS from a reputable source from an eligible country. If the unconditional guarantee is issued by a financial institution located outside the Employer’s Country, the issuing financial institution shall have a correspondent financial institution located in the Employer’s Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV (Bidding Forms) or in another substantially similar format approved by the Employer prior to bid submission. The bid security shall be valid for twenty-eight (28) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2. |
|  | 18.3 If a bid security is specified pursuant to ITB 18.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder’s signing the Contract and furnishing the performance security and the Environmental, Social, Health and Safety (ESHS) Performance Security pursuant to ITB 41. |
|  | 18.4 The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security and the Environmental, Social, Health and Safety (ESHS) Performance Security. |
|  | 18.5 The bid security may be forfeited:1. if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder; or
2. if the successful Bidder fails to:

sign the Contract in accordance with ITB 40; orfurnish a performance security and furnish the Environmental, Social, Health and Safety (ESHS) Performance Security in accordance with ITB 41. |
|  | 18.6 The bid security of a JV shall be in the name of the JV that submits the bid. If the JV has not been constituted into a legally-enforceable JV, at the time of bidding, the Bid Security shall be in the names of all future members as named in the letter of intent mentioned in ITB 3.1 and ITB 10.2.  |
|  | 18.7 If a bid security is not required in the BDS, andif a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or(b) if the successful Bidder fails to: sign the Contract in accordance with ITB 40; or furnish a performance security and if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security in accordance with ITB 41. |
| 1. Format and Signing of Bid
 | The Bidder shall prepare one original of the documents comprising the bid as described in ITB 10 and clearly mark it “Original”. Alternative bids, if permitted in accordance with ITB 12, shall be clearly marked “Alternative”. In addition, the Bidder shall submit copies of the bid in the number specified in the BDS, and clearly mark each of them “Copy”. In the event of any discrepancy between the original and the copies, the original shall prevail.  |
|  | The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid. |
|  | In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid. |
| 1. Submission and Opening of Bids
 |
| 1. Sealing and Marking of Bids
 | The Bidder shall enclose the original and all copies of the bid, including alternative bids, if permitted in accordance with ITB 12, in separate sealed envelopes, duly marking the envelopes as “Original”, “Alternative” and “Copy”. These envelopes containing the original and the copies shall then be enclosed in one single envelope.  |
|  | The inner and outer envelopes shall:* + 1. bear the name and address of the Bidder;
		2. be addressed to the Employer as provided in the BDS pursuant to ITB 21.1;
		3. bear the specific identification of this tendering process specified in accordance with BDS 1.1; and
		4. bear a warning not to open before the time and date for bid opening.
 |
|  | If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the bid. |
| 1. Deadline for Submission of Bids
 | Bids must be received by the Employer at the address and no later than the date and time specified in the BDS. |
|  | The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Tendering Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. |
| 1. Late Bids
 | The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 21. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder. |
| 1. Withdrawal, Substitution, and Modification of Bids
 | A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 19.2 (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:* + 1. prepared and submitted in accordance with ITB 19 and ITB 20 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification;” and
		2. received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB 22.
 |
|  | Bids requested to be withdrawn in accordance with ITB 23.1 shall be returned unopened to the Bidders. |
|  | No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.  |
| 1. Bid Opening
 | Except in the cases specified in ITB 22 and 23, the Employer shall publicly open and read out in accordance with ITB 24.3 all bids received by the deadline, at the date, time and place specified in the BDS, in the presence of Bidders` designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 21.1, shall be as specified in the BDS. |
|  | First, envelopes marked “Withdrawal” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “Substitution” shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked “Modification” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further. |
|  | All other envelopes shall be opened one at a time, including: the name of the Bidder and whether there is a modification; the total Bid Price, per lot (contract) if applicable, including any discounts and alternative bids; the presence or absence of a bid security or Bid Securing Declaration; and any other details as the Employer may consider appropriate. Only discounts and alternative bids read out at bid opening shall be considered for evaluation. The Letter of Bid andtheBill of Quantitiesare to be initialed by representatives of the Employer attending bid opening in the manner specified in the BDS. The Employer shall neither discuss the merits of any bid nor reject any bid (except for late bids, in accordance with ITB 22.1). |
|  | The Employer shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price per lot (contract) if applicable, including any discounts and alternative bids; and the presence or absence of a bid security, if one was required. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders. |
| 1. Evaluation and Comparison of Bids
 |
| 1. Confidentiality
 | Information relating to the evaluation of bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with the tendering process until information on Contract award is communicated to all Bidders in accordance with ITB 39. |
|  | Any attempt by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.  |
|  | Notwithstanding ITB 25.2, if a Bidder wishes to contact the Employer on any matter related to the tendering process from the time of bid opening to the time of Contract award, such Bidder shall do so in writing. |
| 1. Clarification of Bids
 | To assist in the examination, evaluation, and comparison of the bids and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer’s request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids, in accordance with ITB 30. |
|  | If a Bidder does not provide clarifications of its bid by the date and time set in the Employer’s request for clarification, its bid may be rejected. |
| 1. Deviations, Reservations, and Omissions
 | During the evaluation of bids, the following definitions apply:* + 1. “Deviation” is a departure from the requirements specified in the Tendering Document;
		2. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tendering Document; and
		3. “Omission” is the failure to submit part or all of the information or documentation required in the Tendering Document.
 |
| 1. Determination of Responsiveness
 | The Employer’s determination of a bid’s responsiveness is to be based on the contents of the bid itself, as defined in ITB10. |
|  | A substantially responsive bid is one that meets the requirements of the Tendering Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,* + 1. if accepted, would:

(i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or(ii) limit in any substantial way, inconsistent with the Tendering Document, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or* + 1. if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.
 |
|  | The Employer shall examine the technical aspects of the bid submitted in accordance with ITB 15, Technical Proposal, in particular, to confirm that all requirements of Section VII (Works Requirements) have been met without any material deviation, reservation or omission. |
|  | If a bid is not substantially responsive to the requirements of the Tendering Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission. |
| 1. Nonconformities, Errors, and Omissions
 | Provided that a bid is substantially responsive, the Employer may waive any nonconformities in the bid. |
|  | Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid. |
|  | Provided that a bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price may be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the methods specified in Section III (Evaluation and Qualification Criteria). |
| 1. Correction of Arithmetical Errors
 | Provided that the bid is substantially responsive, the Employer shall correct arithmetical errors on the following bases:* + 1. only for admeasurement contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the 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;
		2. 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
		3. 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 arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
 |
|  | Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1 shall result in the rejection of their Bids. |
| 1. Conversion to Single Currency
 | For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the BDS.  |
| 1. Margin of Preference
 | Unless otherwise specified in the BDS, a margin of preference for domestic bidders shall not apply.[[1]](#footnote-0) |
| 1. Subcontractors
 | Unless otherwise stated in the BDS, the Employer does not intend to execute any specific elements of the Works by sub-contractors selected in advance by the Employer.The Employer may permit subcontracting for certain specialized works as indicated in Section III. When subcontracting is permitted by the Employer, the specialized sub-contractor’s experience shall be considered for evaluation. Section III describes the qualification criteria for sub-contractors.Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified in the BDS. |
| 1. Evaluation of Bids
 | The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted. |
|  | To evaluate a bid, the Employer shall consider the followings:* + 1. the bid price, including Provisional Sums and the provision for contingencies in the Summary Bill of Quantities for admeasurement contracts;
		2. price adjustment for correction of arithmetic errors in accordance with ITB 30.1;
		3. price adjustment due to discounts offered in accordance with ITB 13.4;
		4. conversion of the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 31;
		5. price adjustment for nonconformities in accordance with ITB 29.3; and
		6. the additional evaluation factors are specified in Section III (Evaluation and Qualification Criteria).
 |
|  | The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation. |
|  | If this Tendering Document allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Letter of Bid, is specified in Section III (Evaluation and Qualification Criteria). |
|  | If the bid for an admeasurement contract is seriously unbalanced, or the Employer may require the Bidder to produce detailed price analyses on any or all items of the Bill of Quantities, so as to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking the schedule of estimated Contract payments into consideration, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract*.* |
| 1. Comparison of Bids
 | The Employer shall compare the evaluated prices of all substantially responsive bids established in accordance with ITB 34.2 to determine the lowest evaluated bid. |
| 1. Qualification of the Bidder
 | The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III (Evaluation and Qualification Criteria). |
|  | The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder pursuant to ITB 16.1. |
|  | An affirmative determination of qualification shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next comprehensive evaluated bid to make a similar determination of that Bidder’s qualifications to perform satisfactorily. |
| 1. Employer’s Right to Accept Any Bid, and to Reject Any or All Bids
 | The Employer reserves the right to accept or reject any bid, and to annul the tendering process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders. |
| 1. Award of Contract
 |
| 1. Award Criteria
 | Subject to ITB 36.1*,* the Employer shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Tendering Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily. |
| 1. Notification of Award
 | Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, via the Letter of Acceptance included in the Contract Forms, that its bid has been accepted. At the same time, the Employer shall also notify all other Bidders of the results of the bidding, and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at Bid Opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded. |
|  | Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract. |
|  | The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 39.1, requests in writing the grounds on which its bid was not selected. |
| 1. Signing of Contract
 | Promptly upon notification, the Employer shall send the successful Bidder the Contract Agreement. |
|  | Within fourteen (14) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer. |
| 1. Performance Security
 | Within fourteen (14) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the Environmental, Social, Health and Safety (ESHS) Performance Security in accordance with the conditions of contract, subject to ITB 34.5, using for that purpose the Performance Security and ESHS Performance Security Forms included in Section X (Contract Forms).If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institutionlocated in the Employer’s Country. |
|  | Failure of the successful Bidder to submit the above-mentioned Performance Security and, if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security, or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In such case, the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily. |
| 1. Adjudicator
 | The Employer proposes the person named in the BDS to be appointed as Adjudicator under the Contract, at the hourly fee specified in the BDS, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in his Bid. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the Particular Conditions of Contract (PCC) pursuant to Clause 22.1 of the General Conditions of Contract (GCC), to appoint the Adjudicator. |

Section II - Bid Data Sheet (BDS)

A. Introduction

|  |  |
| --- | --- |
| **ITB 1.1** | Number of Invitation for Bids: *MCC-JCL/2024/W-001/NCB***Employer:** **MCC-JCL Aynak Minerals Company Limited.** |
| **ITB 1.1** | **Name of tendering process: Construction of Asphalt Road from Kabul Gardiz Highway to Aynak Mine (1+500 to 8+900)**Identification numberof tendering process: MCC-JCL/2024/W-001/NCB Number and identification of lots comprising this tendering process: Not Applicable |
| **ITB 1.1** | Name of Works: Construction of Asphalt Road from Kabul Gardiz Highway to Aynak Mine (1+500 to 8+900) |
| **ITB 3.1** | Maximum number of members in a JV: **Not Applicable**  |

B. Tendering Document

|  |  |
| --- | --- |
| ITB 6.1 | For **clarification purposes** only, the Employer’s address is:Attention:Mr. Zhao Xia, Procurement SpecialistAddress: MCC-JCL Aynak Minerals Company LimitedMJAM Kabul Office, No. 038, Cement Factory Street, Old Macrorayan, District 16, Kabul City, Afghanistan Country: Afghanistan Email address: zhaochenggang@mcc-mining.comCopy to: procurement@teslaconsultants.com  |
| **ITB 6.4** | Not Applicable |
| **ITB 7.2** | Web page: Not Applicable |

C. Preparation for Bids

|  |  |
| --- | --- |
| ITB 9.1 | Language of the bid: *English* |
| **ITB 10.1 (b)** | The following schedules shall be submitted with the bid: Priced Bill of Quantities along with work plan in consideration of project timeline  |
| ITP 10.1 (h) | A Bidder shall submit the following additional documents in its Bid: **1) Company Registration Certificate,****2) Tax clearance letter** The Bidder shall submit its Code of Conduct that will apply to its employees and subcontractors, to ensure compliance with its Environmental, Social, Health and Safety (ESHS) obligations under the contract. *[Note: Complete and include the risks to be addressed by the Code in accordance with Section VII (Works’ Requirements), e.g. Risks associated with labor influx, spread of communicable diseases, sexual harassment, gender-based violence, illicit behavior and crime, and* maintaining *a safe environment]*In addition, the Bidder shall detail how this Code of Conduct will be implemented. This will include: how it will be introduced into conditions of employment/engagement, what training will be provided, how it will be monitored and how the Contractor proposes to deal with any breaches.The Contractor shall be required to implement the agreed Code of Conduct upon contract award.**Management Strategies and Implementation Plans (MSIP) to manage the (ESHS) risks**The Bidder shall submit Management Strategies and Implementation Plans (MSIP) to manage the following key Environmental, Social, Health and Safety (ESHS) risks.***[****Note:**insert name of plan and specific risk/s];** [e.g. Traffic Management Plan to ensure safety of local communities from construction traffic];
* [e.g. Water Resource Protection Plan to prevent contamination of drinking water];
* [e.g. Boundary Marking and Protection Strategy for mobilization and construction to prevent offsite adverse impacts];
* [e.g. Strategy for obtaining Consents/Permits prior to the start of relevant works such as opening a quarry or borrow pit].

The Contractor shall be required to submit for approval, and subsequently implement, the Contractor’s Environment and Social Management Plan (C-ESMP), in accordance with the particular conditions in subclause 16.2 of the Contract, including the agreed Management Strategies and Implementation Plans described here.*[Note: The extent and scope of this requirements should reflect the significant ESHS risks or requirements set out in Section VII as advised by the Environmental/Social specialist/s. The key risks to be addressed by the Bidder should be identified by Environmental/Social specialist/s, for example, from the Environmental and Social Impact Assessment (ESIA), Environmental and Social Management Plan (ESMP), Resettlement Action Plan (RAP), and/or Consent Conditions (regulatory authority conditions attached to any permits or approvals for the project), up to a maximum of four. The risks may arise during mobilization or construction phases, and may include construction traffic impacts on the community, pollution of drinking water, depositing on private land and impacts on rare species, etc. The management strategies and/or implementation plans to address these could include, as appropriate: mobilization strategy, strategy for obtaining consents/permits, traffic management plan, water resource protection plan, bio-diversity protection plan and a strategy for marking and respecting work site boundaries, etc.]* |
| ITB 11.2 | 1. The Bidder shall also submit the following additional technical documents in its Bid:
2. Bidder performance table

2) Project manager performance table3) Project management organization setting table4) Project management organization staff table5) Construction methods and deployment6) Quality assurance system and control measures7) Project progress plan and guarantee measures8) Construction machinery and testing equipment9) Site entry plan and temporary facility layout10) ESHS management measuresThe documents above will serve as the scoring bases for the comprehensive evaluation of the Bidder's technical part. |
| ITB 11.2 | b) The Bidder shall also submit the following additional commercial documents in its bid:1) Audited financial statements for 2021-20232) Financial certification documents to show the Bidder's financial status and whether it has working capital to invest in this Project3) Pricing bill of quantitiesThe documents above will serve as the scoring bases for the comprehensive evaluation of the Bidder's commercial part. |
| **ITB 12.1** | Alternative bids shall not bepermitted. |
| **ITB 12.2** | Alternative times for completion shall not bepermitted. |
| **ITB 12.4** | Alternative technical solutions shall be permitted for the following parts of the Works Not Applicable. |
| **ITB 12.4** | The Bidder shall not besubject to adjustment during the performance of the Contract.  |
| **ITB 13.8** | The Employer sets a **maximum bid price** at **5,061,200** USD(five million sixty one thousand two hundred), and all bids must not exceed the maximum bid price, otherwise the bid will be considered invalid.  |
| **ITB 17.1** | Bid validity period: 90 days. |
| **ITB 17.3 (a)** | The bid price shall be adjusted by the following factor(s): If the deviation between the construction drawing quantity and the actual on-site quantity exceeds 3%, the settlement quantity shall be settled according to the actual on-site quantity, but the comprehensive unit price shall not be changed. |
| **ITB 18.1** | Bid Security shall be provided. **Bid Security amount*:***97,330.00 USD (Ninety-Seven Thousand, Three Hundred Thirty USD)Bid Security shall be valid for 28 days beyond the validity of the Bid, i.e. up to 118 days from the date bid opening.Bid Security from a reputable bank from the Employer’s country or the Bidder’s country. If it is from the Bidder’s country, it shall be confirmed by the corresponding bank in Afghanistan. |
| **ITB 18.2 (c)** | Other types of acceptable securities: Not Applicable |
| **ITB 18.7** |  **Not Applicable** |
| **ITB 19.1** | The number of copies of the Bid to be completed and returned shall be: One Original and One copy with a soft copy of Bid Bid on U-disk.In the event of any discrepancy between the original and the copies, the original shall prevail. |
| **ITB 19.2** | **The written confirmation of authorization to sign on behalf of the Bidder shall consist of** **Power of Attorney in favor of authorized signatory in original. Submission of the copy of Power of Attorney shall make the Bid non-responsive.** |

D. Submission and Opening of Bids

|  |  |
| --- | --- |
| **ITB 21.1** | Bidders shall nothave the option of submitting their bids electronically.  |
| **ITB 21.1**  | The Employer’s address for the purpose of bid submission is: Attention: Mr. Zhao Xia, Procurement SpecialistAddress: MCC-JCL Aynak Minerals Company LimitedMJAM Kabul Office, No. 038, Cement Factory Street, Old Macroryan, District 16, Kabul City, Afghanistan **The deadline for bid submission is:** **Date:** **July 08, 2024****Time: 10:00 AM (Afghanistan local time)**Email address: zhaochenggang@mcc-mining.comCopy to: procurement@teslaconsultants.com |
| **ITB 24.1** | The bid opening shall take place at: Address: MCC-JCL Aynak Minerals Company LimitedMJAM Kabul Office, No. 038, Cement Factory Street, Old Macroryan, District 16, Kabul City, AfghanistanTelephone: +93 77 435 5742**The deadline for bid submission is:** **Date: July 08, 2024****Time:** **10:00 AM (Afghanistan local time)** |
| **ITB 24.3** | The Letter of Bid and Bill of Quantities shall be initialed by representatives of the Entity attending Bid opening.If initialization is required, it shall be conducted as follows: The letter of bid and priced bill of quantities shall be initialed by representatives of Entity conducting bid opening. Each bid shall be initialed by all representatives and all pages of BoQs shall be numbered. Any modification to the unit or unit price shall be initialed by the representatives of the Entity conducing bid opening. |

E. Evaluation and Comparison of Bids

|  |  |
| --- | --- |
| **ITB 31.1** | The currencies of the Bid shall be converted into a single currency as follows: US Dollar The currency that shall be used for bid evaluation and comparison purposes to convert all Bid prices expressed in various currencies into a single currency is: US Dollar If required; the source of exchange rate shall be: Da Afghanistan Bank (Selling rat Transfer) The date for the exchange rate shall be: “Bid Opening Date” |
| **ITB 32.1** | A margin of preference: **Not Applicable**The application methodology shall be as stipulated in Section III (Evaluation and Qualification Criteria) |
| **ITB 33.1** | **Not Applicable**  |
| **ITB 33.3** | **Not Applicable** |

F. Award of Contract

|  |  |
| --- | --- |
| **ITB 41.1 and 41.2** | **ESHS performance security is not applicable.**  |
| ITB 42.1 | The Adjudicator proposed by the Employer is*:* **Applicable** |

Section III - Evaluation and Qualification Criteria

This section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders if the bidding was not preceded by a prequalification exercise and post qualification is applied. In accordance with ITB 34 and ITB 36, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in ITB 12,1, ITB 12,2 and Section 4 (Bidding Forms).

Wherever a Bidder is required to state a monetary amount, the Bidder shall indicate the USD equivalent using the rate of exchange determined as follows:

* -For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
* -Value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source identified in the ITB 31.1. Any error in determining the exchange rates in the Bid may be corrected by the Employer.

**Scoring Rules for** **Comprehensive Evaluation of Bid**

Comprehensive part (full score: 35 points)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| No. | Scored item | Scoring criteria | Score (point) | Names and scores of Bidders |
| Bidder 1 | Bidder 2 | Bidder 3 | Bidder 4 | Bidder 5 | Bidder 6 | Bidder 7 |
| 1 | Project performance of bidder | There are project performances (similar project description) with a contract value of no less than 2 million USD in the past 5 years: 2 points for each item, with a total score of 4 points. | 4 |  |  |  |  |  |  |  |
| 2 | Performance of Project Manager | The Project Manager has practice performances (similar project description) with a contract value of no less than 2 million USD in the past 5 years: 1 point for each item, with a total score of 3 points. | 3 |  |  |  |  |  |  |  |
| 3 | Project management organization setup | 1. The organization setup is reasonable, professional fields are complete, responsibilities are clear and personnel is sufficient: 3 points;2. The requirements are basically met, but the staffing is not reasonable and the professional fields are not complete: 2 points | 3 |  |  |  |  |  |  |  |
| 4 | Project management staff | 1. Staff performance and certification status fully meet the requirements, and the overall quality is high: 3 points2. The performance of some staff meets the requirements, but the overall quality is good: 2 points3. The performance of management staff meets the requirements, but the overall quality is average: 1 point | 3 |  |  |  |  |  |  |  |
| 5 | Construction plan and deployment | 1. The overall construction layout, construction plan, construction methods, etc. ensure the quality of the Works, the analysis on key and difficult points of construction is prominent and clear, the countermeasures are reasonable, and the investment in machinery and equipment is reasonable: 5 points;2. The overall construction layout is reasonable, the construction plan and countermeasures are feasible, the construction method is feasible, the analysis on key and difficult points of construction is general, and the countermeasures are feasible: 3 points | 5 |  |  |  |  |  |  |  |
| 6 | Quality assurance system and control measures | 1. The quality objectives are clear, the quality assurance system is complete, the responsibilities are clear, and there are targeted measures for key points, difficulties, key parts and processes: 3 points;2. The quality objectives are basically clear, the quality assurance system is basically complete, the responsibilities are clear, and the measures for key points, difficulties, key parts and process basically meet the needs of the project: 2 points | 3 |  |  |  |  |  |  |  |
| 7 | Project schedule and guarantee measures | 1. The construction period target is clear, the guarantee measures are scientific, reasonable and in place, and the network plan is reasonable and targeted: 3 points;2. The construction period target is basically clear; the control measures are general and basically meet the needs of the project: 2 points | 3 |  |  |  |  |  |  |  |
| 8 | Construction machinery and testing equipment | Whether the configuration of equipment, tools and testing equipment is scientific and reasonable, whether the project schedule, quality, HSE management and actual site conditions are fully considered, and whether the construction needs are met: Good: 3 points; Fair: 2 points | 3 |  |  |  |  |  |  |  |
| 9 | Site entry plan and temporary facility layout | Whether the site entry plan and temporary facility layout are reasonable and feasible: Good: 3 points; Fair: 2 points; | 3 |  |  |  |  |  |  |  |
| 10 | ESHS measure plan | Whether the discussion is scientific and reasonable, the logic is clear, and the measures meet the requirements: Excellent: 5 points; Good: 3 points; Fair: 2 points | 5 |  |  |  |  |  |  |  |
|  | Total score of technical part | 35 |  |  |  |  |  |  |  |

**Quotation part (full score: 65 points)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| No. | Scored item | Scoring criteria | Standard score (points) | **Names and scores of Bidders** |
| Bidder 1 | Bidder 2 | Bidder 3 | Bidder 4 | Bidder 5 | Bidder 6 | Bidder 7 |
| 1 | Bid price | 1. The Tenderer sets the maximum bid price of the total price, and the commercial quotation of the Bidder that meets the maximum bid price is a qualified quotation. | Conforming/non-conforming |  | 　 | 　 |  |  |  |  |
| 2. Without changing the substantive content of the Bidder's bid documents, the bid evaluation committee requires the Bidder to make written clarifications, explanations or corrections; forms a question questionnaire; and issues a question clarification notice (including the question questionnaire) to the Bidder. The question letter shall not ask the Bidder suggestive or misleading questions, or clarify omissions and errors in the bids thereof. | Conforming/non-conforming |  |  |  |  |  |  |  |
| 3. Scoring method:1) Bidding benchmark price: If the number of bidders is greater than 7, one highest price and one lowest price are removed; if the number of bidders is less than 7, one highest price is removed. The arithmetic average F2 of the remaining bidders' quotations F1 is used as the bidding benchmark price.2) Bidder's score F3: If the Bidder's quotation F1>F2, the Bidder's score F3=65-(F1-F2)/F2\*100\*2; If the Bidder's quotation F1<F2, the Bidder's score F3=65-(F2-F1)/F2\*100 | 55 |  | 　 | 　 |  |  |  |  |
| 2 | Financial status | 4. The Bidders will be evaluated according to their audited financial statements for the period 2021-2023. Excellent will receive 5 points, good will receive 3 points, fair will receive 1 point, and poor will receive 0 point. If there is a loss or the audited financial report is incomplete, 0 point will be given. | 5 |  |  |  |  |  |  |  |
| 5. For those with good financial status, working capital to invest in this Works, asset-liability ratio less than 50%, and annual turnover greater than 2.5 times the average annual estimated contract price of this Works, 5 points will be given for excellent, 3 points for good, 1 point for fair, and 0 point for poor. | 5 |  |  |  |  |  |  |  |
| 　 | 　 | Total score of quotation part | 65 |  | 　 | 　 |  |  |  |  |
|  |  | Total score | 100 |  |  |  |  |  |  |  |

Signature of judge: Signature of supervisor:

年 MM/DD

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1. Margin of Preference

2. Evaluation

In addition to the criteria listed in ITB 34.2 (a) – (e) the following criteria shall apply:

2.1 Adequacy of Technical Proposal

# Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section VII (Works Requirements).

2.2 Multiple Contracts- Not Applicable

# Pursuant to Subclause 35.4 of the *Instructions to Bidders*, if the Works are grouped in multiple contracts, evaluation will be as follows:

2.3 Alternative Completion Time

# An alternative Completion Time, if permitted under ITB 12.2, will be evaluated as follows: Not Applicable

2.4 Technical Alternatives

# Technical alternatives, if permitted under ITB 12.4, will be evaluated as follows: Not Applicable

2.5 Specialized Subcontractors

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

3. Qualification

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Eligibility and Qualification Criteria** | **Compliance Requirements** | **Documentation** |
| **No.** | **Subject** | **Requirement** | **Single Entity** | **Joint Venture (existing or intended)** | **Submission Requirements** |
| **All Parties Combined** | **Each Member** | **One Member** |
| 1. Eligibility |
| 1.1 | **Nationality** | Nationality in accordance with ITB 3.3 | Must meet requirement | Existing or intended JV, Association must meet requirement | Must meet requirement | N/A | Forms ELI – 1.1 and 1.2, with attachments |
| 1.2 | **Conflict of Interest** | No conflicts of interest  | Must meet requirement | Existing or intended JV, or Association must meet requirement | Must meet requirement | N/A | Letter of Bid |
| 2. Historical Contract Non-Performance |
| 2.1 | **History of Non-Performing Contracts** | [[2]](#footnote-1)Non-performance of a contract did not occur as a result of contractor default for five last years prior to the bid submission deadline.  | Must meet requirement12  | N/A | Must meet requirement | N/A | Form 2 |
| 2.2 | **Suspension Due to Execution of Bid Securing Declaration by the Employer or Withdrawal of the Bid within Bid Validity** | Not under suspension due to execution of a Bid Securing Declaration pursuant to ITB 4.6 or withdrawal of the Bid pursuant to ITB 19.9. | Must meet requirement  | N/A | Must meet requirement  | N/A | Bid Submission Form |
| 2.3 | **Declaration: Past Environmental, Social, Health, and Safety (ESHS) Performance Litigation** | Declare any civil work contracts that have been suspended or terminated and/or performance security called by an employer for reasons related to the non-compliance of any environmental, or social, or health or safety requirements or safeguard in the past five years[[3]](#footnote-2).  | The Contractor must make the declaration. The Specialized Sub-contractor/s, if any, must also make the declaration. | N/A | Each must make the declaration. The Specialized Sub-contractor/s, if any, must also make the declaration. | N/A | Form CON-3 ESHS Performance Declaration |
| 3. Financial Situation and Performance |
| 3.1 | **Financial Capabilities** | (i) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as **1,216,624.50** USD (One Million, Two Hundred Sixteen Thousands, Six Hundred Twenty-Four Point Five Zero) .For the subject contract(s) net of the Bidders other commitments,(ii) The Bidders shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.(iii) The audited balance sheets or other financial statements acceptable to the Employer shall be submitted and must demonstrate the current soundness of the Bidder’s financial position and indicate its prospective long-term profitability. | Must meet requirement | Company must meet 100% of the requirement.   | N/A | N/A | Form FIN – 3.1, with attachments |
| 3.2 | **Average Annual Construction Turnover** | Minimum average annual construction turnover of  **5,353,147.80 USD (Five Million, Three Hundred Fifty-Three Thousands, One Hundred Forty-Seven Point Eight Zero**)calculated as total certified payments received for contracts in progress and/or completed within the last Five years,  | Must meet requirement | Company must meet 100% of the requirement | N/A | **N/A** | Form FIN – 3.2 |
| 4. Experience |
| 4.1 (a) | **General Construction Experience** | Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last Five years, prior to the bid submission deadline. | Must meet requirement | N/A | Must meet requirement | N/A | Form EXP – 4.1 |
| 4.2 (a) | **Specific Construction & Contract Management Experience** | [[4]](#footnote-3) (i) A minimum number of similar contracts specified below that have been satisfactorily and substantially[[5]](#footnote-4) completed as a prime contractor, joint venture member[[6]](#footnote-5), management contractor or sub-contractor6 for the **last Five years** prior to bid submission deadline: (i) One contract, of minimum value **3,406,548.60** **USD (Three Million, Four Hundred, Six Thousand Five Hundred Forty-Eight USD)**Or two contract of minimum value **4,866,498.00 (Four Million, Eight Hundred Sixty-Six Thousand, Four Hundred Ninety Eighty USD)** | Must meet requirement | Must meet requirement[[7]](#footnote-6) | N/A | Must meet requirement  | Form EXP 4.2(a) |
| 4.2 (b) |  | For the above and any other contracts completed and under implementation as prime contractor, joint venture member, management contractor or sub-contractor[[8]](#footnote-7) on or after the first day of the calendar year during the period stipulated in 4.2 (a) above, a minimum construction experience in the following key activities successfully completed[[9]](#footnote-8): 1- Road Works, Road alignment, improvement, sub- grade preparation, earth works, consisting of roadway and side ditch cutting, filling slope correction and other specified in drawing and BoQ2-100mm Asphalt wearing course3-150mm base course4-200mm sub base course5-construction of 3026.4m structures (47 number slab culvert, 10 number washes, 1730m retaining wall with different location and different height, protection wall, 950m stone masonry side drain, and 40m RCC girder bridge for more information refer to structure list of drawing sheetsRoad affairs, development of road paths, road pavement preparation, underground work including excavation, filling and modifying sidewalks and other matters identified in the maps and Bill of Quantity of the project | Must meet requirements  | Must meet requirements | N/A | Must meet the following requirements for the key activities listed below[[10]](#footnote-9)  | Form EXP – 4.2 (b) |

#

5 Key Personnel

The Bidder must demonstrate that it will have a suitably qualified minimum Key Personnel, as described in the table below, that are required to perform the Contract.

The Bidder shall provide details of the Key Personnel and such other Key Personnel that the Bidder considers appropriate, together with their academic qualifications and work experience. The Bidder shall complete the relevant Forms in Section IV, Bidding Forms.

The Contractor shall require the Employer’s consent to substitute or replace the Key Personnel (reference to the Particular Conditions in Contract clause 9.1).

**Key Personnel**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item No.** | **Position/specialization** | **Number** | **Relevant academic qualifications** | **Minimum years of work experience** |
| **Relevant** | **General**  |
| 1 | Project Manager  | 1 | Master Degree in Civil Engineering/ Project Management  | 7 | 10 |
| 2 | Site Construction Manager  | 1 | Bachelor Degree in Civil Engineer  | 7 | 10 |
| 3 | Quality Control Engineer | 1 | Bachelor Degree in Civil Engineer | 5 | 8 |
| 4 | Road Engineer  | 3 | Bachelor Degree in Civil Engineer | 5 | 7 |
| 5 | Survey Engineer | 2 | Bachelor Degree in Civil Engineer / Geodesy | 7 | 10 |
| 6 | Assistant Survey Engineer | 4 | Bachelor Degree in Civil Engineer / Geodesy | 3 | 5 |
|  | **Suitable experts in the following specializations** |
| 1 | Environmental and Social Specialist  | 1 | Bachelor degree in relevant environmental field | 5 years in similar work environments |
| 2 | Safety and Health Specialist | 1 | Bachelor degree in relevant environmental field | Minimum of 4 years in similar work environments |
|  |  |  |  |  |
|  | [*add others as appropriate]* |  |  |  |

6. Equipment

The Bidder must demonstrate that it will have access to the key Contractor’s equipment listed hereafter:

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Equipment Type and Characteristics** | **Minimum Number Required** | **Capacity** |
| * 1. 1
 | Dump truck | 10 | 15 Cum |
| 2 | Loader | 3 | 2.5 Cum Bucket capacity |
| 3 | Vibratory roller | 3 | 10 Ton |
| 4 | Excavator | 3 | 0.7-1.0 Cum Bucket capacity |
| 5 | Grader | 2 | 90 cum/ h |
| 6 | Pneumatic Roller | 4 | GRW 18 |
| 7 | Asphalt Paver | 1 |  |
| 8 | Water browser | 2 | 20000 Lits |
| 9 | Water Pump | 2 | 2–4-inch delivery pipe |
| 10 | Concrete mixer | 2 | 2 Bag Cement in each Bath |
| 11 | Concrete Vibrator | 2 |  |
| 12 | Total Station | 1 | Sokkia  |
| 13 | GPS Machine | 1 | GARMIN |
| 14 | Level Machine | 1 | Sokkia  |

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV.

Section IV - Bidding Forms

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Letter of Bid

|  |
| --- |
| *The Bidder must prepare the Letter of Bid on stationery with its letterhead clearly showing the Bidder’s complete name and address.****Note: All italicized text is for use in preparing these forms and shall be deleted from the final products.*** |

Date of Bid Submission:

Invitation for Bid No.: MCC-JCL/2024/W-001/NCB

Alternative No.: *Not Applicable*

To: MCC-JCL Aynak Minerals Company Limited

1. We have examined and have no reservations to the Tendering Document, including Addenda issued in accordance with Instructions to Bidders (ITB 8) ;
2. We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
3. We have not been suspended nor declared ineligible by the Employer based on execution of a Bid Securing Declaration in the Employer’s country in accordance with ITB 4.6
4. We offer to execute in conformity with the Tendering Document the following Works: Construction of Aynak Mine access way from Kabul highway to the Aynak mine.
5. The total price of our Bid, excluding any discounts offered in item (f) below is:

Total price of the Bid *[insert the total price of the bid in words and figures, indicating the amounts in USD];*

1. The discounts offered and the methodology for their application are:

(i) The discounts offered are: *[insert the total price of the bid in words and figures, indicating the amounts in USD]*

(ii) The exact method of calculations to determine the net price after application of discounts is shown below*:**[Specify in detail the method that shall be used to apply the discounts];*

1. Our bid shall be valid for a period of ***[specify the number of calendar days]*** days from the date fixed for the bid submission deadline in accordance with the Tendering Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
2. If our bid is accepted, we commit to obtain a performance security in accordance with the Tendering Document;
3. Weare not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.2(e), other than alternative bids submitted in accordance with ITB 13;
4. We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by Islamic Emirate of Afghanistan or a debarment imposed by the National Procurement Directorate Debarment Committee. Further, we are not ineligible under the Employer’s country laws and regulations;
5. We are not a government owned entity.
6. We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and
7. We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
8. We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption

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

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

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

Signature of the person named above  *[****insert signature of person whose name and capacity are shown above****]*

***Date signed \_ [insert date of signing] day of [insert month]***, ***[insert year]***

**\***: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

\*\*: Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid Schedules.

Schedules

Bill of Quantities

***Objectives***

*The objectives of the Bill of Quantities are:*

*(a) to provide sufficient information on the quantities of Works to be performed to enable bids to be prepared efficiently and accurately; and*

*(b) to provide a priced Bill of Quantities for use in the periodic valuation of Works executed when a Contract has been entered into.*

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

*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, 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.*

*These Notes for Preparing a Bill of Quantities are intended only as information for the Employer or the person drafting the Tendering Document. They should not be included in the final documents.*

1. *Sample Bill of Quantities*[[11]](#footnote-10)

PLEASE USE THE ATTACHED EXCEL FILE FOR SUBMITTING BILL OF QUANTITIES

**2. Schedule of Payment**

**For ...........................***insert name of Section of the Works*

Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The Employer should insert the names of each Section of the Works.

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Name of Payment** | **Percentage %** | **Remarks** |
| **1** | **First Payment** | **25%** | **Total Price Ratio in Bill of Quantities** |
| **2** | **Second Payment** | **50%** | **Total Price Ratio in Bill of Quantities** |
| **3** | **Third Payment** | **70%** | **Total Price Ratio in Bill of Quantities** |
| **4** | **Fourth Payment** | **85%** | **Total Price Ratio in Bill of Quantities** |
| **5** | **Final Payment** | **100%** | **Total Price Ratio in Bill of Quantities** |
|  | **TOTAL BID PRICE** |  | **Total Price Ratio in Bill of Quantities** |

Note: The advance payment is 20% of the total contract price, which will be deducted from the first two progress payments. After the Contractor submits the progress payment documents, 50% will be deducted each time until the deduction is completed. The payment ratio withheld for each progress payment is 10%. (See GCC46.1, 49.1)

|  |
| --- |
| Form of Bid Security (Bank Guarantee) |

 *[Bank Letter head]*

**Beneficiary:**

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

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

Date: *[Insert date of issue]*

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

Guarantor: \_ *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of the Bidder, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members thereof]* (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the execution of *[insert description of contract]* under Invitation for Bids No. [*insert number*] (“the IFB”).

Furthermore, we understand that, according to the Beneficiary’s conditions, bids must be supported by a bid guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in letters]* (*insert amount in numbers*) upon receipt by us of the Beneficiary’s complying supported by the Beneficiary’s statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating either that the Applicant:

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

(b) having been notified of the acceptance of its Bid by the Beneficiary during the period of bid validity, (i) fails to execute the Contract Agreement or (ii) fails to furnish the performance security, and, if required, the Environmental, Social, Health and Safety (ESHS) Performance Security, in accordance with the Instructions to Bidders (“ITB”) of the Beneficiary’s bidding document.

This guarantee will expire: (a) if the Applicant is the successful Bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the performance security and, if required, the Environmental, Social, Health and Safety (ESHS) Performance Security, issued to the Beneficiary upon the instruction of the Applicant; and (b) if the Applicant is not the successful Bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary’s notification to the Applicant of the results of the tendering process; or (ii) twenty-eight days after the Validity Period, which date shall be established by presentation to us of copies of the Letter of Bid and any extension(s) thereto, accompanied by the bidding document; or (c) three years after the date of issue of this guarantee.

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

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

*[signature(s)]*

* 1. Note: All italicized text is for use in preparing this form and shall be deleted from the final product.

Technical Proposal

Technical Proposal Forms

* **Key Personnel Schedule**
* **Equipment**
* **Site Organization**
* **Method Statement**
* **Quality Control**
* **Mobilization Schedule**
* **Construction Schedule**
* **ESHS Management Strategies and Implementation Plans**
* **Code of Conduct (ESHS)**
* **Others**

Form PER -1

**Key Personnel**

**Schedule**

Bidders should provide the names and details of the suitably qualified Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

**Key Personnel**

|  |  |
| --- | --- |
| **1.** | **Title of position:**  |
|  | **Name of candidate:**  |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **2.** | Title of position:*[Environmental Specialist]* |
|  | **Name of candidate:** |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **3.** | Title of position: *[Health and Safety Specialist]* |
|  | **Name of candidate:** |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **4.** | Title of position: *[Social Specialist]* |
|  | **Name of candidate:**  |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **5.** | **Title of position: *[insert title]*** |
|  | **Name of candidate** |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |

Form PER-2:

Resume and Declaration

 Key Personnel

|  |
| --- |
| **Name of Bidder** |

|  |
| --- |
| **Position [#*1*]: [*title of position from Form PER-1*]** |
| **Personnel information** | **Name:**  | **Date of birth:** |
|  | **Address:** | **E-mail:** |
|  |  |  |
|  | **Professional qualifications:** |
|  | **Academic qualifications:** |
|  | Language proficiency:*[language and levels of speaking, reading and writing skills]*  |
| **Details** |  |
|  | **Address of employer:** |
|  | **Telephone:** | **Contact (manager / personnel officer):** |
|  | **Fax:** |  |
|  | **Job title:** | **Years with present employer:** |

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

|  |  |  |  |
| --- | --- | --- | --- |
| **Project**  | **Role** | **Duration of involvement** | **Relevant experience** |
| *[main project details]* | *[role and responsibilities on the project]* | *[time in role]* | *[describe the experience relevant to this position]*  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Declaration**

I, the undersigned Key Personnel, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Bid:

|  |  |
| --- | --- |
| **Commitment** | **Details** |
| **Commitment to duration of contract:** | *[insert period (start and end dates) for which this Key Personnel is available to work on this contract]* |
| **Time commitment:** | *[insert the number of days/week/months/ that this Key Personnel will be engaged]* |

I understand that any misrepresentation or omission in this Form may:

1. be taken into consideration during Bid evaluation;
2. my disqualification from participating in the Bid; and
3. my dismissal from the contract.

**Name of Key Personnel: [*insert name*]**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: (month year): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Countersignature of authorized representative of the Bidder:**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: (month year): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Equipment

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III (Evaluation and Qualification Criteria). A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder. The Bidder shall provide all the information requested below, to the extent possible. Fields with asterisk (\*) shall be used for evaluation.

|  |
| --- |
| **Type of Equipment\*** |
| **Equipment Information** | **Name of manufacturer,**  | **Model and power rating** |
|  | **Capacity\*** | **Year of manufacture\*** |
| **Current Status** | **Current location** |
|  | **Details of current commitments** |
|  |  |
| **Source** | **Indicate source of the equipment** **o Owned o Rented o Leased o Specially manufactured** |

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

|  |  |
| --- | --- |
| **Owner** | **Name of owner** |
|  | **Address of owner** |
|  |  |
|  | **Telephone** | **Contact name and title** |
|  | **Fax** | **Telex** |
| **Agreements** | **Details of rental / lease / manufacture agreements specific to the project** |
|  |  |
|  |  |

Site Organization

*[insert Site Organization information]*

Method Statement

*[insert Method Statement]*

Quality Control

*[insert quality control method]*

Mobilization Schedule

*[insert Mobilization Schedule]*

Construction Schedule

*[insert Construction Schedule]*

ESHS Management Strategies and Implementation Plans

(ESHS-MSIP)

#### ***[Note to Employer: modify the text in italics in the numbered points below, to name the appropriate documents.]***

#### The Bidder shall submit comprehensive and concise Environmental, Social, Health and Safety Management Strategies and Implementation Plans (ESHS-MSIP) as required by ITB 11.1 (h) of the Bid Data Sheet. These strategies and plans shall describe in detail the actions, materials, equipment, management processes etc. that will be implemented by the Contractor, and its subcontractors.

#### In developing these strategies and plans, the Bidder shall have regard to the ESHS provisions of the contract including those as may be more fully described in the following:

#### *[the Works Requirements described in Section VII];*

#### *[Environmental and Social Impact Assessment (ESIA)];*

#### *[Environmental and Social Management Plan (ESMP)];*

#### *[Resettlement Action Plan (RAP)];*

#### *[Consent Conditions (regulatory authority conditions attached to any permits or approvals for the project)]; and*

#### *[any other relevant document/s as specified].*

Code of Conduct: Environmental, Social, Health and Safety (ESHS)

#### ***[Note to Employer: modify the text in italics in the numbered points below, to name the appropriate documents.]***

#### The Bidder shall submit the Code of Conduct that will apply to the Contractor’s employees and subcontractors as required by ITB 11.1 (h) of the Bid Data Sheet. The Code of Conduct shall ensure compliance with the ESHS provisions of the contract, including those as may be more fully described in the following:

#### *[the Works Requirements described in Section VII];*

#### *[Environmental and Social Impact Assessment (ESIA)];*

#### *[Environmental and Social Management Plan (ESMP)];*

#### *[Consent Conditions (regulatory authority conditions attached to any permits or approvals for the project)]; and*

#### *[any other relevant document*/s as specified].

#### In addition, the Bidder shall submit an outline of how this Code of Conduct will be implemented. This will include: how it will be introduced into conditions of employment/engagement, what training will be provided, how it will be monitored and how the Contractor proposes to deal with any breaches.

Others

Bidder’s Qualification

To establish its qualifications to perform the contract in accordance with Section III (Evaluation and Qualification Criteria), the Bidder shall provide the information requested in the corresponding Information forms included hereunder.

Form ELI -1.1: Bidder Information Form

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

ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Page *\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |
| --- |
| Bidder's name |
| In case of Joint Venture (JV), name of each member: |
| Bidder's actual or intended country of registration:*[indicate country of Constitution]* |
| Bidder's actual or intended year of incorporation: |
| Bidder's legal address: |
| Bidder's authorized representative informationName: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Telephone/Fax numbers: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*E-mail address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| 1. Attached are copies of original documents of🞎 Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 3.3.🞎 In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 3.1.🞎 In case of Government-owned enterprise or institution, in accordance with ITB 3.5 documents establishing:* Legal and financial autonomy
* Operation under commercial law
* Establishing that the Bidder is not dependent agency of the Employer

2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

Form ELI -1.2: Information Form for JV Bidders

(to be completed for each member of Joint Venture)

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

ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* of *\_\_\_\_\_\_\_\_\_\_\_\_* pages

|  |
| --- |
| Bidder’s Joint Venture name: |
|  JV member’s name: |
|  JV member’s country of registration: |
|  JV member’s year of constitution: |
|  JV member’s legal address in country of constitution: |
|  JV member’s authorized representative informationName: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Telephone/Fax numbers: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_E-mail address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 1. Attached are copies of original documents of🞎 Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.3.🞎 In case of a government-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and absence of dependent status, in accordance with ITB 4.5.2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

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

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

Joint Venture Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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|  |
| --- |
| Non-Performed Contracts in accordance with Section III (Evaluation Criteria and Qualifications) |
| 🞎 Contract non-performance did not occur since 1st January *[insert year]* specified in Section III (Evaluation Criteria and Qualifications) subclause 2.1.🞎 Contract(s) not performed since 1st January *[insert year]* specified in Section III (Evaluation Criteria and Qualifications) requirement 2.1 |
| **Year** | **Non- performed portion of contract** | **Contract Identification** | **Total Contract Amount (current value, currency, exchange rate and US$ equivalent)** |
|  |  | Contract Identification: Name of Employer: Address of Employer: Reason(s) for nonperformance:  |  |
| Pending Litigation, in accordance with Section III (Evaluation Criteria and Qualifications) |
| 🞎 No pending litigation in accordance with Section III (Evaluation Criteria and Qualifications) subclause 2.3. |
| 🞎 Pending litigation in accordance with Section III (Evaluation Criteria and Qualifications) subclause 2.3 as indicated below. |

Form CON – 3: Environmental, Social, Health, and Safety

Performance Declaration

*[The following table shall be filled in for the Bidder, each member of a Joint Venture and each Specialized Subcontractor]*

Bidder’s Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member’s or Specialized Subcontractor’s Name: *[insert* *full name]*

ICB No. and title: *[insert ICB number and title]*

Page *[insert page number]* of *[insert total number]* pages

|  |
| --- |
| Environmental, Social, Health, and Safety Performance Declaration in accordance with Section III (Qualification Criteria, and Requirements) |
| 🞎 No suspension or termination of contract: An employer has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental, Social, Health, or Safety (ESHS) performance since the date specified in Section III (Qualification Criteria, and Requirements) subclause 2.5.🞎 Declaration of suspension or termination of contract: The following contract(s) has/have been suspended or terminated and/or Performance Security called by an employer(s) for reasons related to Environmental, Social, Health, or Safety (ESHS) performance since the date specified in Section III (Qualification Criteria, and Requirements) subclause 2.5. Details are described below: |
| **Year** | **Suspended or terminated portion of contract** | **Contract Identification** | **Total Contract Amount (current value, currency, exchange rate and US$ equivalent)** |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*Name of Employer: *[insert full name]*Address of Employer: *[insert street/city/country]*Reason(s) for suspension or termination: *[indicate main reason(s)]* | *[insert amount]* |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*Name of Employer: *[insert full name]*Address of Employer: *[insert street/city/country]*Reason(s) for suspension or termination: *[indicate main reason(s)]* | *[insert amount]* |
| *…* | *…* | *[list all applicable contracts]* | *…* |
| **Performance Security called by an employer(s) for reasons related to ESHS performance** |
| Year | Contract Identification | Total Contract Amount (current value, currency, exchange rate and US$ equivalent) |
| *[insert year]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*Name of Employer: *[insert full name]*Address of Employer: *[insert street/city/country]*Reason(s) for calling of performance security: *[indicate main reason(s)]* | *[insert amount]* |
|  |  |  |

Form CCC: Current Contract Commitments / Works in Progress

Bidders and each partner to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name of contract | Employer, contact address/tel/fax | Value of outstanding work (current US$ equivalent) | Estimated completion date | Average monthly invoicing over last six months(US$/month) |
| 1. |  |  |  |  |
| 2. |  |  |  |  |
| 3. |  |  |  |  |
| 4. |  |  |  |  |
| 5. |  |  |  |  |
| etc. |  |  |  |  |

Form FIN – 3.1: Financial Situation and Performance

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

Joint Venture Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

**1. Financial data**

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

**2. Sources of Finance**

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

|  |  |  |
| --- | --- | --- |
| **No.** | **Source of finance** | **Amount (US$ equivalent)** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
|  |  |  |

**2. Financial documents**

The Bidder and its parties shall provide copies of financial statements for *\_\_\_\_\_\_\_\_\_\_\_*years pursuant Section III (Evaluation and Qualifications Criteria) Sub-factor 3.2. The financial statements shall:

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

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

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

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

🞎 [[12]](#footnote-11)Attached are copies of financial statements for the *\_\_\_\_\_\_\_\_\_\_\_\_*years required above; and complying with the requirements

Form FIN - 3.2: Average Annual Construction Turnover

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

Joint Venture Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

\* See Section III (Evaluation and Qualification Criteria) subclause 3.2.

Form FIN - 3.3: Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in Section III (Evaluation and Qualification Criteria)

|  |  |
| --- | --- |
| Source of financing | Amount (US$ equivalent) |
| 1. |  |
| 2. |  |
| 3. |  |
| 4. |  |

Form EXP - 4.1: General Construction Experience

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

Joint Venture Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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|  |  |  |  |
| --- | --- | --- | --- |
| StartingYear | EndingYear | Contract Identification | Role ofBidder |
|  |  | Contract name: *­­­­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Brief Description of the Works performed by theBidder: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Amount of contract: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Name of Employer: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |
|  |  | Contract name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Brief Description of the Works performed by theBidder: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Amount of contract: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Name of Employer: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |
|  |  | Contract name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Brief Description of the Works performed by theBidder: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Amount of contract: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Name of Employer: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |

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

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

Joint Venture Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |
| --- | --- |
| **Similar Contract No.** | **Information** |
| Contract Identification |  |
| Award date |  |
| Completion date |  |
| Role in Contract | Prime Contractor 🞎 | Member in JV 🞎 | Management Contractor🞎 | Sub-contractor 🞎 |
| Total Contract Amount |  | US$ *\** |
| If member in a JV or sub-contractor, specify participation in total Contract amount |  |  | *\** |
| Employer's Name: |  |
| Address:Telephone/fax numberE-mail: |  |

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

**Specific Construction and Contract Management Experience (cont.)**

|  |  |
| --- | --- |
| **Similar Contract No.** | **Information** |
| Description of the similarity in accordance with subclause 4.2(a) of Section III: |  |
| 1. Amount |  |
| 2. Physical size of required works items |  |
| 3. Complexity |  |
| 4. Methods/Technology |  |
| 5. Construction rate for key activities |  |
| 6. Other Characteristics |  |

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

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

Joint Venture Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[[13]](#footnote-12) Sub-contractor's Name (as per ITB 34.2 and 34.3): *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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Sub-contractor's Name (as per ITB 34.2 and 34.3): *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

1. Key Activity No One: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

|  |  |
| --- | --- |
|  | **Information** |
| Contract Identification |  |
| Award date |  |
| Completion date |  |
| Role in Contract | Prime Contractor🞎 | Member in JV🞎 | Management Contractor🞎 | Sub-contractor🞎 |
| Total Contract Amount |  | US$  |
| Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year | Total quantity in the contract(i) | Percentage participation(ii) | Actual Quantity Performed (i) x (ii) |
| Year 1 |  |  |  |
| Year 2 |  |  |  |
| Year 3 |  |  |  |
| Year 4 |  |  |  |
| Employer’s Name: |  |
| Address:Telephone/fax numberE-mail: |  |

|  |  |
| --- | --- |
|  | **Information** |
| Employer’s Name: |  |
| Address:Telephone/fax numberE-mail: |  |

2. Activity No. Two

3. …………………

|  |  |
| --- | --- |
|  | **Information** |
| Description of the key activities in accordance with subclause 4.2(b) of Section III: |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

**Form EXP-4.3 (cont.)**

**Specific Construction Experience of Project Manager (Cont.)**

|  |  |
| --- | --- |
| **Similar Contract No.** | **Information** |
| Description of the similarity in accordance with subclause 4.2(a) of Section III: |  |
| 1. Amount |  |
| 2. Physical size of required works items |  |
| 3. Complexity |  |
| 4. Methods/Technology |  |
| 5. Construction rate for key activities |  |
| 6. Other Characteristics |  |
| **Similar Contract No.** | **Information** |
| Description of the similarity in accordance with subclause 4.2(a) of Section III: |  |
| 1. Amount |  |
| 2. Physical size of required works items |  |
| 3. Complexity |  |
| 4. Methods/Technology |  |
| 5. Construction rate for key activities |  |
| 6. Other Characteristics |  |

Section V - Eligible Countries

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

1. In reference to ITB 3.7, and 4.1, for the information of the Bidders, the firms, goods and services from the following countries at the present time are excluded from this tendering process:

Under ITB 3.7 (a) and 4.1  *v None*

Under ITB 3.7 (b) and 4.1  *None*

PART II – Works Requirements

Section VII - Works Requirements

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[Supplementary Information Error! Bookmark not defined.](#_Toc473902877)

Specifications

The Specifications are attached

Drawings are attached

PART 3 – Conditions and Forms of Contract

Section VIII. General Conditions of Contract

These General Conditions of Contract (GCC), read in conjunction with the Particular Conditions of Contract(PCC) and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

These General Conditions of Contract have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The GCC can be used for both smaller admeasurement contracts and lump sum contracts.

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**General Conditions of Contract**

A. General

|  |  |
| --- | --- |
| 1. Definitions
 | * 1. Boldface type is used to identify defined terms.
1. The Accepted Contract Amount means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
2. The Activity Schedule is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
3. 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 23.
4. The Bank means the financing institution named in the PCC.
5. The Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.
6. The Compensation Events are those defined in Clause 42 of the Contract.
7. The Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Subclause 53.1.
8. The Contract is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Subclause 2.3 below.
9. The Contractor is the party whose Bid to carry out the Works has been accepted by the Employer.
10. The Contractor’s Bid is the completed bidding document submitted by the Contractor to the Employer.
11. The Contract Price is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
12. The Days are calendar days, and the months are calendar months.
13. The Dayworks are varied work inputs subject to payment on a time basis for relevant materials and equipment.
14. The Defect is any part of the Works not completed in accordance with the Contract.
15. The Defects Liability Certificate is the certificate issued by Project Manager upon correction of defects by the Contractor.
16. The Defects Liability Period is the period named in the PCC pursuant to Subclause 34.1 and calculated from the Completion Date.
17. The Drawings means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract, including calculations and other information provided or approved by the Project Manager for the execution of the Contract.
18. The Employer is the party who employs the Contractor to carry out the Works.
19. The Equipment is the Contractor’s machinery and vehicles brought temporarily to the Site to construct the Works.
20. “In writing” or “written” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.
21. The Initial Contract Price is the Contract Price listed in the Employer’s Letter of Acceptance.
22. The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the PCC. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
23. Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.
24. Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
25. The Project Manager is the person named in the PCC (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
26. PCC means Particular Conditions of Contract.
27. **The Site is the area** **defined as such in the PCC**.
28. Site Investigation Reports are those that were included in the Tendering Document and are factual and interpretative reports about the surface and subsurface conditions at the Site.
29. Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
30. The Start Date is given in the PCC. 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.
31. A Subcontractor is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
32. Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
33. A Variation is an instruction given by the Project Manager which varies the Works.
34. The Works are what the Contract requires the Contractor to construct, install, and turn over to the Employer.
 |
| 1. Interpretation
 | * 1. In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
	2. If sectional completion is specified in the PCC, 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).
	3. The documents forming the Contract shall be interpreted in the following order of priority:
1. Agreement,
2. Letter of Acceptance,
3. Contractor’s Bid,
4. Particular Conditions of Contract,
5. General Conditions of Contract, including Appendices,
6. Specifications,
7. Drawings,
8. Bill of Quantities,[[14]](#footnote-13) and
9. any other document listed in the PCC as forming part of the Contract.
 |
| 1. Language and Law
 | * 1. The language of the Contract and the law governing the Contract are stated in the PCC.
	2. Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Employer’s country when

(a) as a matter of law or official regulations, the Borrower’s country prohibits commercial relations with that country; or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s Country prohibits any import of goods from that country or any payments to any country, person, or entity in that country.  |
| 1. Project Manager’s Decisions
 | * 1. Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
 |
| 1. Delegation
 | * 1. Otherwise specified in the PCC**,** the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.
 |
| 1. Communications
 | * 1. Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
 |
| 1. Subcontracting
 | * 1. The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor’s obligations.
 |
| 1. Other Contractors
 | * 1. The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the PCC. 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.
 |
| 1. Personnel and Equipment
 | * 1. The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
	2. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor’s staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
	3. If the Employer, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Clause 9.2 above.
 |
| 1. Employer’s and Contractor’s Risks
 | * 1. The Employer carries the risks which this Contract states are Employer’s risks, and the Contractor carries the risks which this Contract states are Contractor’s risks.
 |
| 1. Employer’s Risks
 | * 1. From the Start Date until the Defects Liability Certificate has been issued, the followings are Employer’s risks:
1. The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to:
	1. 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
	2. 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.
2. 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.
	1. From the Completion Date until the Defects Liability 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
3. a defect which existed on the Completion Date,
4. an event occurring before the Completion Date, which was not itself an Employer’s risk, or
5. the activities of the Contractor on the Site after the Completion Date.
 |
| 1. Contractor’s Risks
 | 12.1 From the Starting Date until the Defects Liability 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. |
| 1. Insurance
 | * 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 PCCfor the following events which are due to the Contractor’s risks:
1. loss of or damage to the Works, Plant, and Materials;
2. loss of or damage to Equipment;
3. loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
4. personal injury or death.
	1. Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager’s approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
	2. 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 due.
	3. Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
	4. Both parties shall comply with any conditions of the insurance policies.
 |
| 1. Site Data
 | * 1. The Contractor shall be deemed to have examined any Site Data referred to in the PC**C**, supplemented by any information available to the Contractor.
 |
| 1. Contractor to Construct the Works
 | * 1. The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
 |
| 1. The Works to Be Completed by the Intended Completion Date
 | * 1. The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Procedure submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
 |
| 1. Approval by the Project Manager
 | * 1. The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.
	2. The Contractor shall be responsible for design of Temporary Works.
	3. The Project Manager’s approval shall not alter the Contractor’s responsibility for design of the Temporary Works.
	4. The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
	5. All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.
 |
| 1. Safety
 | * 1. The Contractor shall be responsible for the safety of all activities on the Site.
 |
| 1. Discoveries
 | * 1. Anything of 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 Project Manager of such discoveries and carry out the Project Manager’s instructions for dealing with them.
 |
| 1. Possession of the Site
 | * 1. The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the PCC, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
 |
| 1. Access to the Site
 | * 1. The Contractor shall allow the Project Manager and any person authorized by the Project Manager 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.
 |
| 1. Instructions, Inspections and Audits
 | * 1. The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
	2. The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and sub consultants to keep, accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.
	3. The Contractor shall permit and shall cause its Subcontractors and sub consultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site and/or the accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Contractor’s and its Subcontractors’ and sub consultants’ attention is drawn to Subclause 25.1 which provides, inter alia, that acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Subclause 22.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank’s prevailing sanctions procedures).
 |
| 1. Appointment of the Adjudicator
 | * 1. The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer’s issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the PCC, to appoint the Adjudicator within 14 days of receipt of such request.
	2. 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, the Adjudicator shall be designated by the Appointing Authority designated in the PCC within 30 days.
 |
| 1. Procedure for Disputes
 | * 1. If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager 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 Project Manager’s decision.
	2. The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
	3. The Adjudicator shall be paid by the hour at the rate specified in the PCC, together with reimbursable expenses of the types specified in the PCC, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator’s written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator’s decision shall be final and binding.
	4. The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and, in the place, specified in the PCC.
 |
| 1. Corrupt and Fraudulent Practices
 | * 1. The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Appendix A to GCC.
	2. The Employer requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.
 |

B. Time Control

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| 1. Procedure
 | * 1. Within the time stated in the PCC, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Procedure showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Procedure shall be consistent with those in the Activity Schedule.
	2. An update of the Procedure shall be a procedure 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.
	3. The Contractor shall submit to the Project Manager for approval an updated Procedure at intervals no longer than the period stated in the PCC. If the Contractor does not submit an updated Procedure within this period, the Project Manager may withhold the amount stated in the PCC from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Procedure has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.
	4. The Project Manager’s approval of the Procedure shall not alter the Contractor’s obligations. The Contractor may revise the Procedure and submit it to the Project Manager again at any time. A revised Procedure shall show the effect of Variations and Compensation Events.
 |
| 1. Extension of the Intended Completion Date
 | * 1. The Project Manager 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.
	2. The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager 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.
 |
| 1. Acceleration
 | * 1. When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.
	2. If the Contractor’s priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.
 |
| 1. Delays Ordered by the Project Manager
 | * 1. The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
 |
| 1. Management Meetings
 | * 1. Either the Project Manager 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.
	2. The Project Manager 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 Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
 |
| 1. Early Warning
 | * 1. The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
	2. The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.
 |

C. Quality Control

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| 1. Defect Identification
 | * 1. The Project Manager 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 Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
 |
| 1. Tests
 | * 1. If the Project Manager 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.
 |
| 1. Correction of Defects
 | * 1. The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the PCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
	2. Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager’s notice.
 |
| 1. Uncorrected Defects
 | * 1. If the Contractor has not corrected a Defect within the time specified in the Project Manager’s notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.
 |

D. Cost Control

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| --- | --- |
| 1. Contract Price[[15]](#footnote-14)
 | * 1. The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
 |
| 1. Changes in the Contract Price[[16]](#footnote-15)
 | * 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 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.
	2. If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.
 |
| 1. Variations
 | * 1. All Variations shall be included in updated Procedures produced by the Contractor.[[17]](#footnote-16)
	2. The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
	3. If the Contractor’s quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager’s own forecast of the effects of the Variation on the Contractor’s costs.
	4. If the Project Manager 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.
	5. The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
	6. If the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Subclause 39.1 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. [[18]](#footnote-17)
 |
| 1. Cash Flow Forecasts
 | * 1. [[19]](#footnote-18) When the Procedure is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
 |
| 1. Payment Certificates
 | * 1. The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
	2. The Project Manager shall check the Contractor’s monthly statement and certify the amount to be paid to the Contractor.
	3. The value of work executed shall be determined by the Project Manager.
	4. The value of work executed shall comprise the value of the quantities of work in the Bill of Quantities that have been completed.[[20]](#footnote-19)
	5. The value of work executed shall include the valuation of Variations and Compensation Events.
	6. The Project Manager 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.
 |
| 1. Payments
 | * 1. Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 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 shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
	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. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
	3. Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
	4. Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.
 |
| 1. Compensation Events
 | * 1. The followings shall be Compensation Events:
1. The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Subclause 20.1.
2. The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
3. The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
4. The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
5. The Project Manager unreasonably does not approve a subcontract to be let.
6. Ground conditions are substantially more adverse than could reasonably have been assumed before visual inspection from the information issued to bidders (including the Site Investigation Reports).
7. The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
8. Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
9. The advance payment is delayed.
10. The effects on the Contractor of any of the Employer’s Risks.
11. The Project Manager unreasonably delays issuing a Certificate of Completion.
	1. 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 Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
	2. As soon as information demonstrating the effect of each Compensation Event upon the Contractor’s forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor’s forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager’s own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.
	3. The Contractor shall not be entitled to compensation to the extent that the Employer’s interests are adversely affected by the Contractor’s not having given early warning or not having cooperated with the Project Manager.
 |
| 1. Tax
 | * 1. The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.
 |
| 1. Currencies
 | * 1. Where payments are made in currencies other than the currency of the Employer’s country specified in the PCC, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor’s Bid.
 |
| 1. Price Adjustment
 | * 1. Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the PCC. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type specified below applies to each Contract currency:

**Pc = Ac + Bc Imc/Ioc**where: Pc is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”. Ac and Bc [[21]](#footnote-20) are coefficients specified in the PCC, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c”; and Imc is the index prevailing at the end of the month being invoiced and Ioc is the index prevailing 28 days before Bid opening for inputs payable; both in the specific currency “c”.* 1. 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.
 |
| 1. Retention
 | * 1. The Employer shall retain from each payment due to the Contractor the proportion stated in the PCC until Completion of the whole of the Works.
	2. Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 51.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” Bank guarantee.
 |
| 1. Liquidated Damages
 | * 1. The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the PCC 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 Contract. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.
	2. If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager 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 Subclause 41.1.
 |
| 1. Bonus
 | * 1. The Contractor shall be paid a Bonus calculated at the rate per calendar day 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 Project Manager shall certify that the Works are complete, although they may not be due to be complete.
 |
| 1. Advance Payment
 | * 1. The Employer shall make advance payment to the Contractor of the amounts stated in the PCC by the date stated in the PCC,against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies 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 shall not be charged on the advance payment.
	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 Project Manager.
	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. 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.
 |
| 1. Securities
 | * 1. The Performance Security shall be provided for the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the PCC**,** by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.
 |
| 1. Dayworks
 | * 1. If applicable, the Dayworks rates in the Contractor’s Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
	2. All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
	3. The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.
 |
| 1. Cost of Repairs
 | * 1. Loss or damage to the Works or Materials to be incorporated in the Works 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. Finishing the Contract

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| --- | --- |
| 1. Completion
 | * 1. The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.
 |
| 1. Taking Over
 | * 1. The Employer shall take over the Site and the Works within seven days of the Project Manager’s issuing a certificate of Completion.
 |
| 1. Final Account
 | * 1. The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor’s account if it is correct and complete. If it is not, the Project Manager shall issue within 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 Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
 |
| 1. Operating and Maintenance Manuals
 | * 1. If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the PCC.
	2. If the Contractor does not supply the Drawings and/or manuals by the dates stated in the PCC pursuant to GCC Subclause 56.1, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount stated in the PCCfrom payments due to the Contractor.
 |
| 1. Termination
 | * 1. The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
	2. Fundamental breaches of Contract shall include but not be limited to:
1. the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
2. the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
3. the Employer or the Contractor is made bankrupt or goes into liquidation;
4. a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager’s certificate;
5. the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
6. the Contractor does not maintain a Security, which is required; and
7. 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; or
8. if the Contractor, in the judgment of the Employer, has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Client may, after giving fourteen (14) days written notice to the Contractor, terminate the Contract and expel him from the Site.
	1. When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Subclause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.
	2. Notwithstanding the above, the Employer may terminate the Contract for convenience.
	3. If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.
 |
| 1. Payment upon Termination
 | * 1. If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed. 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.
	2. If the Contract is terminated for the Employer’s convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.
 |
| 1. Property
 | * 1. All Materials on the Site, 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.
 |
| 1. Release from Performance
 | * 1. If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.
 |
| 1. Suspension of Bank Loan or Credit
 | * 1. In the event that the Bank suspends the Loan or Credit to the Employer, from which part of the payments to the Contractor are being made:
1. The Employer is obligated to notify the Contractor of such suspension within 7 days of having received the Bank’s suspension notice.
2. If the Contractor has not received sums due it within the 28 days for payment provided for in Subclause 40.1, the Contractor may immediately issue a 14-day termination notice.
 |

**APPENDIX B**

**Environmental, Social, Health and Safety (ESHS)**

**Metrics for Progress Reports**

 ***[Note to Employer: the following metrics may be amended to reflect the Employer’s environmental, social, health and safety policies and/or the ESHS requirements of the project. The metrics that are required should be determined by the ESHS risks of the Works and not necessarily by the scale of the Works]***

Metrics for regular reporting:

1. Environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies;
2. Health and safety incidents, accidents, injuries and all fatalities that require treatment;
3. Interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);
4. Status of all permits and agreements:
5. work permits: number required, number received, actions taken for those not received;
6. status of permits and consents:
* list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);
* list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);
* identify major activities undertaken in each area this month and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);
* for quarries: status of relocation and compensation (completed, or details of monthly activities and current status).
1. Health and safety supervision:
2. safety officer: number of working days, number of full inspections & partial inspections, reports to construction/project management;
3. number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);
4. Worker accommodations:
5. number of expats housed in accommodations, number of locals;
6. date of last inspection, and highlights of inspection including status of accommodations’ compliance with national and local law and good practice, including sanitation, space, etc;
7. actions taken to recommend/require improved conditions, or to improve conditions.
8. HIV/AIDS: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);
9. Gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);
10. Training:
11. number of new workers, number receiving induction training, dates of induction training;
12. number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS), environmental and social training;
13. number and dates of HIV/AIDS sensitization training, no. workers receiving training (this month and in the past); same questions for gender sensitization, flaglady/flagman training.
14. Environmental and social supervision:
15. environmentalist: days worked, areas inspected and numbers of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, etc.), highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;
16. sociologist: days worked, number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, clinic, HIV/AIDS center, community centers, etc.), highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and
17. community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.
18. Grievances: list this month’s and unresolved past grievances by date received, complainant, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up(Cross-reference other sections as needed):
19. Worker grievances;
20. Community grievances
21. Traffic and vehicles/equipment:
22. traffic accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;
23. accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;
24. overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).
25. Environmental mitigations and issues (what has been done):
26. dust: number of working bowers, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); % of rock/muram/spoil lorries with covers, actions taken for uncovered vehicles;
27. erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;
28. quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken this month at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;
29. blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross-reference other sections as needed);
30. spill cleanups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination;
31. waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;
32. details of tree plantings and other mitigations required undertaken this month;
33. details of water and swamp protection mitigations required undertaken this month.
34. Compliance:
35. compliance status for conditions of all relevant consents/permits (including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;
36. compliance status of ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
37. other unresolved issues from previous months related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

Section IX. Particular Conditions of Contract

|  |
| --- |
| **A. General** |
| **GCC 1.1 (p)** | The Defects Liability Period refers to the period during which the Contractor assumes the obligation to repair defects in accordance with the Contract and the Employer reserves a quality guarantee deposit, which is calculated from the date the works pass the final acceptance. |
| **GCC 1.1 (s)** | **Employer: MCC-JCL Aynak Minerals Company Limited**. |
| **GCC 1.1 (v)** | The Intended Completion Date for the whole of the Works shall be270 calendar days. |
| **GCC 1.1 (y)** | The Project Manager**shall be specified later.** |
| **GCC 1.1 (aa)** | **The Site is located at Town of Kamal Khel, Forrest Gump Region, Luger Province, Afghanistan** |
| **GCC 1.1 (dd)** | **The Start Date shall be** **14 days from the date of Contract signing.** |
| **GCC 1.1 (hh)** | **The Works include** **Construction of Asphalt Road from Kabul Gardiz Highway to Aynak Mine (1+500 to 8+900)**  |
| **GCC 2.2** | Sectional Completions: Not applicable |
| **GCC 2.3(i)** | The following documents also form part of the Contract: ESHS Management Strategies and Implementation Plans; and BoQ, Drawing, Specification Code of Conduct (ESHS). |
| **GCC 3.1**  | 1.The language of the contract is English.2.The Works shall be constructed in accordance with Chinese standards; and the contractor's materials, construction and acceptance shall comply with relevant Chinese standards and specifications.3.The law that applies to the Contract is the law of Islamic Emirates of Afghanistan.4.*The arbitration institution for this Contract is China International Economic and Trade Arbitration Commission.* |
| **GCC 5.1** | The Project manager may not delegate any of his duties and responsibilities. |
| **GCC 8.1** | Schedule of other contractors: **Not Applicable.** |
| **GCC 9.1** | **Key Personnel**GCC 9.1 is replaced with the following:* 1. Key Personnel are the Contractor’s personnel named in 9.1 of the Particular Conditions of Contract. The Contractor shall employ the Key Personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of Key Personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.

*[insert the name/s of each Key Personnel agreed by the Employer prior to Contract signature.]* |
| **GCC 9.2** | **Code of Conduct (ESHS)**The following is inserted at the end of GCC 9.2:1. “The reasons to remove a person include behavior which breaches the Code of Conduct (ESHS) (e.g. spreading communicable diseases, sexual harassment, gender-based violence, illicit activity or crime)”.
 |
| **GCC 13.1** | The minimum insurance amounts and deductibles shall be:* + 1. For loss or damage to the Works, Plant and Materials: 50,000 US Dollars.
		2. For loss or damage to Equipment: 50,000 US Dollars.
		3. iii. For loss or damage to property (excluding works, production equipment, materials and equipment) arising out of or in connection with this Contract: 50,000 US Dollars.
		4. iv. For personal injury or death:
			1. of the Contractor’s employees: 30,000 US Dollars
			2. of other people: 20,000 US Dollars
 |
| **GCC 14.1** | Site Data: None |
| **GCC 16.1 (add new 16.2)** | **ESHS Management Strategies and Implementation Plans**The following is inserted as a new sub-clause 16.2:“16**.2** The Contractor shall not commence any Works, including mobilization and/or pre-construction activities (e.g. limited clearance for haul roads, site accesses and work site establishment, geotechnical investigations or investigations to select ancillary features such as quarries and borrow pits), unless the Project Manager is satisfied that appropriate measures are in place to address environmental, social, health and safety risks and impacts. At a minimum, the Contractor shall apply the Management Strategies and Implementation Plans and Code of Conduct, submitted as part of the Bid and agreed as part of the Contract. The Contractor shall submit, on a continuing basis, for the Project Manager’s prior approval, such supplementary Management Strategies and Implementation Plans as are necessary to manage the ESHS risks and impacts of ongoing works. These Management Strategies and Implementation Plans collectively comprise the Contractor’s Environmental and Social Management Plan (C-ESMP). The C-ESMP shall be approved prior to the commencement of construction activities (e.g. excavation, earth works, bridge and structure works, stream and road diversions, quarrying or extraction of materials, concrete batching and asphalt manufacture). The approved C-ESMP shall be reviewed, periodically (but not less than every six (6) months), and updated in a timely manner, as required, by the Contractor to ensure that it contains measures appropriate to the Works activities to be undertaken. The updated C-ESMP shall be subject to prior approval by the Project Manager”. |
| **GCC 20.1** | The Site Possession Date(s) shall be: **7** days from singing of contract  |
| **GCC 23.1 &****GCC 23.2** | Appointing Authority for the Adjudicator: Not Required |
| **GCC 24.3** | Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: Not Applicable |
| **GCC 24.4** | Not Applicable! The arbitration clause is amended as follows: Any disputes arising out of or related to this Contract shall be submitted to the China International Economic and Trade Arbitration Commission for arbitration in accordance with the arbitration rules of the Commission in force at the time of application for arbitration. The arbitration award shall be final and binding on both parties. |
| **B. Time Control** |
| **GCC 26.1** | The Contractor shall submit for approval a Program for the Works within 14 days from the date of the Letter of Acceptance. |
| **GCC 26.2** | **ESHS Reporting**Inserted at the end of GCC 26.21. “In addition to the progress report, the Contractor shall also provide a report on the Environmental, Social, Health and Safety (ESHS) metrics set out in Appendix B. In addition to Appendix B reports, the Contractor shall also provide immediate notification to the Project Manager of incidents in the following categories. Full details of such incidents shall be provided to the Project Manager within the timeframe agreed with the Project Manager.
	* 1. confirmed or likely violation of any law or international agreement;
		2. any fatality or serious (lost time) injury;
		3. significant adverse effects or damage to private property (e.g. vehicle accident, damage from fly rock, working beyond the boundary)
		4. major pollution of drinking water aquifer or damage or destruction of rare or endangered habitat (including protected areas) or species; or
		5. any allegation of sexual harassment or sexual misbehavior, child abuse, defilement, or other violations involving children.
 |
| **GCC 26.3** | The period between Procedure updates is 30 days. The Project Manager may withhold 20% of the Lump Sum Payment Certificate until the overdue works are completed. |
| **C. Quality Control** |
| **GCC 34.1** | The Defects Liability Period is: 1 year. |
| **GCC 34** | Add clause GCC 34.3:The Contractor shall send personnel to the site for repair within 3 days from the date of receipt of the written repair notice. |
| **D. Cost Control** |
| **GCC 36** | Add clause 36.2:This Contract is a fixed-price Contract. Unless otherwise agreed in special terms, the unit price and total price of this Contract shall not be changed. |
| **GCC 37.1** | Amend 37.1 into:If the Contractor's actual on-site construction quantity deviates by more than 3% from the construction drawing quantity, the settlement quantitys shall be based on the actual on-site construction quantitt, but the comprehensive unit price shall not be changed. |
| **GCC 38.2** | Add after the first sentence of 38.2:“The Contractor shall also provide information of any ESHS risks and impacts of the Variation”. |
| **GCC 40** | 1. Add new GCC 40.7:

“40.7 if the Contractor was, or is, failing to perform any ESHS obligations or work under the Contract, the value of this work or obligation, as determined by the Project Manager, may be withheld until the work or obligation has been performed, and/or the cost of rectification or replacement, as determined by the Project Manager, may be withheld until rectification or replacement has been completed. Failure to perform includes, but is not limited to the following: 1. failure to comply with any ESHS obligations or work described in the Works’ Requirements which may include: working outside site boundaries, excessive dust, failure to keep public roads in a safe usable condition, damage to offsite vegetation, pollution of water courses from oils or sedimentation, contamination of land e.g. from oils, human waste, damage to archeology or cultural heritage features, air pollution as a result of unauthorized and/or inefficient combustion;
2. failure to regularly review C-ESMP and/or update it in a timely manner to address emerging ESHS issues, or anticipated risks or impacts;
3. failure to implement the C-ESMP;
4. failure to have appropriate consents/permits prior to undertaking Works or related activities;
5. failure to submit ESHS report/s (as described in Appendix C), or failure to submit such reports in a timely manner; and
6. failure to implement remediation as instructed by the Engineer within the specified timeframe (e.g. remediation addressing non-compliance/s).
7. Add new clause 40.8:

The payment plan of this Contract is to make progress payments in five installments on the basis of the proportion of the price corresponding to the cumulative completed works to the total contract price. When the proportion of the price corresponding to the cumulative completed works to the total contract price reaches 25%, 50%, 70%, 85%, and 100%, respectively, the Contractor may request progress payments from the Employer. After deducting the amount agreed in the Contract, the Employer will pay the remaining amount to the Contractor. In case of change in the Works, it will not be included in the calculation of the cumulative works completed. |
| **GCC 43** | Add new clause 43.2The sums payable by the Employer to the Contractor shall be inclusive of all taxes, duties and other levies arising out of the Contract, for which the Contractor shall be fully responsible. Upon request by the Employer, the Contractor shall provide the Employer with documentary proof of payment of such taxes, duties and other levies. |
| **GCC 44.1** | The currency of the Employer’s is USD. |
| **GCC 45.1** | The Contract *is not* subject to price adjustment in accordance with GCC Clause 45. |
| **GCC 46.1** | The proportion of payments retained is ten 10 percent. |
| **GCC 47.1** | The liquidated damages for the whole of the Works are 0.1 percent of the final Contract Price per day. The maximum amount of liquidated damages for the whole of the Works is ten (10) percent of the final Contract Price. |
| **GCC 48.1** | The Bonus is not applicable in this contract. |
| **GCC 49.1** | The Advance Payments shall be: The advance payment ratio is 20%, and after the contract is signed, the contractor shows the advance payment guarantee. The advance payment shall be deducted twice, and 50% shall be deducted each time after the contractor submits the progress payment documents until the deduction is completed. |
| **GCC 50.1** | An Environmental, Social, Safety and Health (ESHS) Performance Security Shall not be provided for the Employer.  |
| **GCC 50.1** | Option 1: The Performance Security shall be for the following minimum amounts equivalent as a percentage of the Contract Price:Ten (10) percent of the contract price.A Bank Guarantee shall be unconditional (on demand) (see Section X (Contract Forms)).The Performance Security amount is Ten (10) percent of the contract price(a) Performance Security – Bank Guarantee: in the amount(s) of Ten (10) percent of the Accepted Contract Amount and in the same currency (ies) of the Accepted Contract Amount. |
| **E. Finishing the Contract** |
| **GCC 56.1** | The date by which operating and maintenance manuals are required is 30 days before the completion certificate is issuedThe date by which “as built” drawings are required is 30 days before the completion certificate is issued |
| **GCC 56.2** | The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is 3% of the final contract. |
| **GCC 57.2 (g)** | The maximum number of days is 100 days |
| **GCC 58.1** | The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is *30 percent.* |

Section X - Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

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Letter of Acceptance

***[ on letterhead paper of the*** Employer***]***

*. . . . . . .* ***[date]****. . . . . . .*

To: . . . . . . . . . . ***[*** ***name and address of the Contractor]*** . . . . . . . . . .

Subject: . . . . . . . . . . ***[Notification of Award Contract No.]***. . . . . . . . . . .

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

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section X (Contract Forms) in the Tendering Document.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made the . . . . . .day of . . . . . . . . . . . . . . .., . . . . . .., between . . ... ***[****name of the Employer****]*** . . .. .. . . . . (hereinafter “the Employer”), of the one part, and . . . . . *[name of the Contractor]*. . . . .(hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as . . . . . ***[name of the Contract]****. . . . .*should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

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

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

1. Letter of Acceptance
2. Letter of Bid
3. Addenda Nos \_\_\_\_\_\_\_\_(if any)
4. Particular Conditions
5. General Conditions of Contract, including Appendices;
6. The Specification;
7. Drawings;
8. Bill of Quantities; [[22]](#footnote-21) and
9. Any other documents listed in the PCC as forming part of the Contract.

3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

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 Islamic Emirate of Afghanistan on the day, month and year specified above.

|  |  |  |  |
| --- | --- | --- | --- |
| Signed by: |  | Signed by: |  |
| for and on behalf of the Employer | for and on behalf the Contractor |
| in the presence of: |  | in the presence of: |  |
| Witness, Name, Signature, Address, Date | Witness, Name, Signature, Address, Date |

Performance Security (Bank Guarantee)

**Option 1: (Bank Guarantee)**

*[Bank Letter Head]*

**Beneficiary:** *[insert name and Address of* Employer*]*

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

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

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of \_ *[insert name of contract and brief description of* Works*]* (hereinafter called "the Contract").

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

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or total sums. Upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, we will pay in the types and proportions of currencies in which the Contract Price is payable whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the …. Day of ……, … [[23]](#footnote-22)2, and any demand for payment under it must be received by us at this office indicated above on or before that date.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

Advance Payment Security

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[Insert name and Address of* Employer*]*

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

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

**Guarantor:**  *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of* Works*]* (hereinafter called "the Contract").

Furthermore, we understand that an advance payment in the sum *[insert amount in figures]* () *[insert amount in words]* is to be made against an advance payment guarantee according to the conditions of the Contract.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* ( ) *[insert amount in words][[24]](#footnote-23)1* upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

* + 1. has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
		2. has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary’s bank stating that the advance payment referred to above has been credited to the Applicant on its account number *[insert number]* at *[insert name and address of Applicant’s bank]*..

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the *[insert day]* day of *[insert month]*, *[insert year]*,[[25]](#footnote-24)2 whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***



**MCC-JCL Aynak Minerals Company Limited.**

Invitation for Bids

 **MCC-JCL Aynak Minerals Company Limited.**

**Contract Title:** Construction of Asphalt Road from Kabul Gardiz Highway to Aynak Mine (1+500 to 8+900)

**Reference No**. : MCC-JCL/2024/W-001/NCB

1. MCC-JCL Aynak Minerals Company Limited self-financed the cost of **Construction of Asphalt Road from Kabul Gardiz Highway to Aynak Mine (1+500 to 8+900)**.

**2**. MCC-JCL Aynak Minerals Company Limited now invites sealed bids from eligible bidders for **the Construction of Asphalt Road from Kabul Gardiz Highway to Aynak Mine (1+500 to 8+900).**

**3**. Bidding will be conducted through the National Competitive Bidding procedures as specified in the *Procurement law and Procedure of Islamic Emirate of Afghanistan*, and is open to all eligible bidders as defined in the *Procurement Law and Procedure*.

**4**. Interested eligible bidders may obtain further information from *……………., Procurement …………., electronic mail address:* ……………………………………….

………………………………………………………………….and inspect the Tendering Document during office hours at the address given below*.*

5. A complete set of bidding documents in English *language* may be obtained by interested eligible bidders upon the submission of a written application to the address below free of cost.

6. Bids must be delivered to the address below*.* Electronic bidding will notbe permitted. Late bids will be rejected. Bids will be publicly opened in the presence of the bidders’ designated representatives at the address below on *08/July/ 2024 at 10:00 AM (Afghanistan local time)*.

7. All bids must be accompanied by a Bid Security in the amount of**97,330.00 USD (Ninety-Seven Thousand, Three Hundred Thirty USD)** and shall be valid for twenty-eight (28) days beyond the original validity period of the bid.

8. The address (es) referred to above is (are):

Attention: Mr. Zhao Xia, Procurement Specialist ………………………………………...

Address: MCC-JCL Aynak Minerals Company Limited

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1. [↑](#footnote-ref-0)
2. Nonperformance, as decided by the Employer, shall include all contracts where (a) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted. [↑](#footnote-ref-1)
3. The Employer may use this information to seek further information or clarifications in carrying out its due diligence [↑](#footnote-ref-2)
4. The similarity shall be based on the physical size, complexity, methods/technology and/or other characteristics described in Section VII, Work’s Requirements. Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted. [↑](#footnote-ref-3)
5. Substantial completion shall be based on 80% or more works completed under the contract. [↑](#footnote-ref-4)
6. For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder’s share, by value, shall be considered to meet this requirement. [↑](#footnote-ref-5)
7. In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated. [↑](#footnote-ref-6)
8. For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder’s share shall be counted to meet this requirement. [↑](#footnote-ref-7)
9. Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period. The rate of production shall be the annual production rate for the key construction activity (or activities). [↑](#footnote-ref-8)
10. Requirement can be met through a Specialized Sub-contractor [↑](#footnote-ref-9)
11. In case of Lump Sum Contract, use Sample Activity Schedule. [↑](#footnote-ref-10)
12. If the most recent set of financial statements is for a period earlier than 12 months from the date of bid, the reason for this should be justified. [↑](#footnote-ref-11)
13. If applicable. [↑](#footnote-ref-12)
14. In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule”. [↑](#footnote-ref-13)
15. In lump sum contracts, replace GCC Subclauses 36.1 as follows:

36.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for materials on site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule. [↑](#footnote-ref-14)
16. In lump sum contracts, replace entire GCC Clause 37 with new GCC Subclause 37.1, as follows:

37.1 The Activity Schedule shall be amended by the Contractor to accommodate changes of Procedure or method of working made at the Contractor’s own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule. [↑](#footnote-ref-15)
17. In lump sum contracts, add “and Activity Schedules” after “Procedure”. [↑](#footnote-ref-16)
18. In lump sum contracts, delete this paragraph. [↑](#footnote-ref-17)
19. In lump sum contracts, add “or Activity Schedule” after “Procedure”. [↑](#footnote-ref-18)
20. In lump sum contracts, replace this paragraph with “The value of work executed shall comprise the value of completed activities in the Activity Schedule”. [↑](#footnote-ref-19)
21. In lump sum contracts, add “or Activity Schedule” after “Procedure”. [↑](#footnote-ref-20)
22. In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule”. [↑](#footnote-ref-21)
23. *2 Insert the date twenty-eight days after the expected completion date as described in GC Clause 53.1. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed one year, in response to the Beneficiary’s written request for such extension”.* [↑](#footnote-ref-22)
24. 1 *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.* [↑](#footnote-ref-23)
25. 2 *Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension* *of this guarantee for a period not to exceed one year, in response to the Beneficiary’s written request for such extension”.* [↑](#footnote-ref-24)