

Recommended Tender Documents

Templates and User Guide

Procurement of Plant and Related Works

(Version #2.2)

Helsinki – February 2019

PREFACE

These Recommended Tender Documents, Templates and User Guide have been prepared by the Nordic Environment Finance Corporation (NEFCO) for the procurement of Plant and Related Works in compliance with the NEFCO Procurement Guidelines for projects that are financed in whole or in part by or through NEFCO.

These Recommended Tender Documents (RTD) are derived from the Master Document for Procurement of Goods prepared by the Multilateral Development Banks and International Financial Institutions (IFIs), as well as from EBRD's Standard Tender Documents for Simple Goods¹. The procedures and practices which are presented in them reflect the "best practices" by these institutions.

Borrowers/Grant Beneficiaries or their procurement consultants should complete these documents by entering data specific to the procurement in question in the relevant sections; in some cases, this necessitates a selection from different alternatives presented in the documents. These alternatives are illustrative and not necessarily comprehensive. Other customised provisions may be required in certain cases. The following guidelines should be observed:

- (a) Specific details such as the "name of the Employer" or "address for tender submission" should be entered where indicated.
- (b) Notes in bold italics found inside a bold square or between square brackets [] represent instructions, which the drafter of the tender document should follow. These instructions should be deleted and not included in the final document.
- (c) General Conditions of Contract (GCC) should be used without change; amendments to particular clauses therein as required by the specifics of a particular contract should be defined in the Particular Conditions of Contract (PCC).

Guidance Notes on using these documents, which can be found at the beginning of each Section, are only for the use of the drafter and must not be included in the tender documents that are to be issued to potential tenderers.

This document follows the structure and the provisions of the above-mentioned Master Document, except where specific considerations with regard to restricted scale, nature and other specifics of NEFCO-financed operations have required a change and comprises the following Sections:

Section I: Instructions to Tenderers (ITT)

This Section provides information to help Tenderers prepare their tender. Information is also provided on the submission, opening and evaluation of tenders as well as the award of contract.

Section II: Evaluation and Qualification Criteria

This Section specifies the criteria to be used to determine the lowest evaluated tender and the requirements for the Tenderer's qualification to perform the contract. The criteria for tender evaluation and the methods for applying such criteria in evaluation should be reviewed carefully. It may be appropriate to delete or to modify some of the criteria given in this document or to use additional criteria. Furthermore, criteria must be quantified in monetary terms except in rare occasions where that is impractical.

Section III: Tender Forms

This Section contains the forms, which are to be completed by the Tenderer and submitted as part of its tender.

Section IV: Employer's Requirements

This Section includes the List of Plant and Related Works, the Delivery and Completion Schedules, the Technical Specifications and the Drawings that describe the Plant and Related Works to be procured.

¹ May 2018 edition.

Section V: General Conditions of Contract (GCC)

This Section contains the general clauses to be applied to all contracts. The text of the clauses in this Section **can only be modified or adjusted through Section VI, Particular Conditions of Contract (PCC)**.

Section VI: Particular Conditions of Contract (PCC)

This Section contains clauses specific to each contract that modify or supplement Section V, General Conditions of Contract (GCC). The sections included in the documents should only be regarded as representative of the most common provisions. All particular conditions should be selected and/or drafted specifically for each procurement.

Section VII: Annex to the PCC - Contract Forms

This Section includes the forms which once completed will form part of the contract. These forms shall be completed only by the successful Tenderer after contract award.

The Invitation for Tenders provides information that enables potential tenderers to decide whether to participate.

The Invitation for Tenders must be published no earlier than forty (40) calendar days after the publication of the General Procurement Notice on NEFCO's website www.nefco.org as well as the Employer's own procurement website and official government procurement portal in the Employer's Country. When possible the Invitation for Tenders shall also be published in a newspaper with wide circulation in the Employer's Country and official gazettes or international trade publications as appropriate. The notice should also be sent to potential Contractors that have responded to the General Procurement Notice and to local representatives of potential foreign Contractors e.g. commercial attachés of the embassies accredited in the Employer's Country. Employer should maintain a register of all potential tenderers, who obtained the tender documents, and make it available to interested parties.

Although the Invitation for Tenders does not form part of the tender documents, it shall be submitted to NEFCO as part thereof for review and no objection. The information in the Invitation for Tenders must be consistent with and reflect the information provided by the tender documents. Apart from the essential items listed in the Recommended Tender Documents the Invitation for Tenders should also indicate any important tender evaluation criteria and/or qualification requirements. An example of this would include a requirement for a minimum level of experience in execution of works of the nature and complexity that are similar to the works for which the Invitation for Tenders is issued.

INVITATION FOR TENDERS

....[country]

....[project title]

INVITATION FOR TENDERS

...[Plant and Related Works to be procured]

This Invitation for Tenders follows the General Procurement Notice for this project which was published on the the Procurement Notices section of NEFCO's website (<https://www.nefco.org>).

[Name of Employer] hereinafter referred to as "the Employer", intends to use part of the proceeds of financing from the Nordic Environment Finance Corporation (NEFCO) towards the cost of [insert name of the Project].

The Employer now invites sealed tenders from Contractors for the following contract[s] to be funded from part of the proceeds of the financing:

- [For each contract include a concise description of the Plant and related Works as applicable. State size and principal quantities. For contracts involving works provide locations, estimated duration and advise if any contracts are to be implemented concurrently.].

Tenders are invited for one or more lots. Each lot must be priced separately. Tenders for more than one lot may offer discounts and such discounts will be considered in the comparison of tenders.

Delete the above paragraph if the tender does not involve more than one contract/lot.

Tendering for contracts that are to be financed with the proceeds of NEFCO financing is open to firms from any country.

To be qualified for the award of a contract, tenderers must satisfy the following minimum criteria:

- ... [Indicate any particular post qualification requirements, which should be the same criteria set out in the Instructions to Tenderers].

Delete the above paragraph if not applicable.

Invitation for Tenders

Tender documents may be obtained from the office at the address below free of charge upon a written request from a prospective Tenderer.

Upon receiving the written request from prospective Tenderer, the documents will be promptly dispatched electronically in PDF and MS Word format, however, no liability can be accepted for their non-delivery or late delivery. In case of discrepancies between the PDF and Word versions of the document, the PDF version shall prevail.

All tenders must be accompanied by a Tender-Securing Declaration.

Tenders must be delivered to the office at the address below on or before[*specify time and date of deadline for submission*], at which time they will be opened in the presence of those tenderers' representatives who choose to attend.

The date for submission of tenders should be no less than forty (40) days after the date of publication of this notice or the availability of the tender documents, whichever is the latest.. For tenders requiring a pre-tender meeting or site visit a longer period would be necessary but generally not longer than fifty (50) days.

A register of potential tenderers who have purchased the tender documents may be inspected at the address below.

Prospective tenderers may obtain further information from, and also inspect and acquire the tender documents at, the following office:

[**Contact name**]
[**Employer's entity**]
[**Address**]
[**Tel:**]
[**Email:**]

Date: _____

**Tender Document for
Procurement of Plant
and Related Works**

Procurement of:

Issued on:

Tender No:

Employer:

Country:

Tender Document

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Section I. Instructions to Tenderers

A. General

- 1. Scope of Tender**

 - 1.1 The Employer *[insert name]* issues this Tender Document for the procurement of *[insert description of plant and related works to be performed, including the name of Lots, if any]*, as specified in Section IV, Employer's Requirements.
 - 1.2 Unless otherwise stated, throughout this Tender Document definitions and interpretations shall be as prescribed in Section V, General Conditions of Contract.
- 2. Source of Funds**

 - 2.1 The Borrower/Grant Beneficiary (hereinafter called "Borrower/Grant Beneficiary") *[insert name of Borrower/Grant Beneficiary]* has applied for or received financing (hereinafter called "funds") from the Nordic Environment Finance Corporation (hereinafter called "NEFCO") toward the cost of the project named *[insert name of project]*. The Borrower/Grant Beneficiary intends to apply a portion of the funds to eligible payments under the contract(s) for which this Tender Document is issued.
 - 2.2 Payments by NEFCO will be made only at the request of the Borrower/Grant Beneficiary and upon approval by NEFCO in accordance with the terms and conditions of the financing agreement between the Borrower/Grant Beneficiary and NEFCO (hereinafter called the "Financing Agreement"), and will be subject in all respects to the terms and conditions of that Financing Agreement.
- 3. Prohibited Practices**

 - 3.1 NEFCO requires that Borrowers/Grant Beneficiaries (including beneficiaries of NEFCO financing), as well as tenderers, suppliers, sub-suppliers, contractors, subcontractors, concessionaires, consultants and subconsultants under NEFCO-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, NEFCO:

 - (a) defines, for the purposes of this provision, Prohibited Practices as one or more of the following:

- (i) “Corrupt Practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (ii) “Fraudulent Practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “Coercive Practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence improperly the actions of a party;
 - (iv) “Collusive Practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - (v) “Obstructive Practice” is (a) deliberately destroying, falsifying, altering or concealing of evidence material to an investigation related to the Contract; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to such investigation or from pursuing the investigation, or (b) acts intended to materially impede the exercise of NEFCO’s contractual rights of audit or access to information or the rights that any relevant authority has in accordance with any law, regulation or treaty;
 - (vi) “Money Laundering” is (i) the conversion or transfer of property, knowing that such property is derived from criminal activity or participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such activity to evade the legal consequences of his action; (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from participation in such activity; (iii) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from participation in such activity; (iv) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling any of the actions mentioned in the foregoing points;
 - (vii) “Financing of terrorism” is the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of the Council of the European Union Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism; and
 - (viii) “Theft” means the misappropriation of property belonging to another party.
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- (b) will reject a proposal for award if it determines that the tenderer, supplier, sub-supplier, contractor, subcontractor, concessionaire, consultant or subconsultant recommended for award has engaged in Prohibited Practices in competing for the contract in question;
 - (c) will cancel the portion of NEFCO financing allocated to a contract for Plant and Related Works if it at any time determines that Prohibited Practices were engaged in by representatives of the Borrower/Grant Beneficiary or of other beneficiary of NEFCO financing during the procurement or the execution of that contract, without the Borrower/Grant Beneficiary having taken timely and appropriate action satisfactory to NEFCO to remedy the situation;
 - (d) may declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a NEFCO-financed contract if it at any time determines that the firm has

engaged in Prohibited Practices in competing for, or in executing, a NEFCO-financed contract; and

- (e) reserves the right, where a Borrower/Grant Beneficiary or a firm has been found by a judicial process in any country or a finding by the enforcement (or similar) mechanism of another international organisation, including Mutual Enforcement Institutions, to have engaged in Prohibited Practices
 - (i) to cancel all or part of NEFCO financing for such Borrower/Grant Beneficiary; and
 - (ii) to declare that such a firm is ineligible, either indefinitely or for a stated period of time, to be awarded a NEFCO-financed contract; and
- (f) will have the right to require that, in contracts financed by NEFCO, a provision be included requiring suppliers, sub-suppliers, contractors, subcontractors, concessionaires, consultants and sub-consultants to permit NEFCO to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by NEFCO.

3.2 Furthermore, tenderers shall be aware of the provisions stated in Section V, General Conditions of Contract and Section VI, Particular Conditions of Contract.

4. Eligible Tenderers

4.1 A Tenderer may be a natural person, private entity, government-owned entity—subject to Instructions to Tenderers (hereinafter referred to as “ITT”) 4.3—or any combination of such entities in the form of a joint venture, consortium, or association (JVCA). In the case of a joint venture, consortium, or association:

- (a) all partners shall be jointly and severally liable, and
- (b) the JVCA shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the partners of the JVCA during the Tender process and, in the event the JVCA is awarded the Contract, during contract execution.

4.2 NEFCO permits firms and individuals from all countries to offer Plant and Related Works for NEFCO-financed contracts.

Consistent with international law, the proceeds of the NEFCO financing shall not be used for payment to persons or entities or for any import of Plant, if such payment or import is prohibited by EU sanctions and a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. Persons or entities, or Contractors offering Plant and Related Works, covered by such prohibition shall therefore not be eligible for the award of NEFCO-financed contracts.

4.3 A Tenderer shall not have a conflict of interest, as defined in sub-cause 3.26 of the NEFCO’s Procurement Guidelines. All Tenderers found to have a conflict of interest shall be disqualified.

4.4 Tenderers shall be excluded if:

- (a) as a matter of law or official regulation, the Borrower’s/Grant Beneficiary’s country prohibits commercial relations with that country or imposes sanctions on such firms, provided that NEFCO is satisfied that such exclusion does not preclude effective competition;
- (b) a firm or individuals representing the Tenderer are subject to EU economic sanctions, as published in the Official Journal of the European Union; or

(c) 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/Grant Beneficiary's country prohibits any import of Plant from that country or any payments to persons or entities in that country.

5. **Eligible Plant and Related Works**
- 5.1 All Plant and Related Works to be supplied under the Contract and financed by NEFCO, shall originate from an eligible country in accordance with ITT 4.2.
- 5.2 For purposes of this paragraph, the term Plant includes commodities, raw material, machinery, equipment, and industrial plants; and Related Works includes works such as transportation, installation, commissioning, training, and initial maintenance.

B. Preparation of Tenders

6. **Cost of Tendering**
- 6.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 6.2 A prospective Tenderer requiring any clarification of the Tender Document shall contact the Employer in writing by sending a written request to the address *[indicate the contact person and address]*. The Employer will respond to any request for clarification, provided that such request is received prior to *[indicate the date – normally not less than 14 days before the tender closing date]*, within the workweek. The Employer response shall be in writing with copies to all Tenderers who have received the Tender Document, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Tender Document as a result of a request for clarification, it shall do so.
- 6.3 The Tenderer may visit and examine the project site and obtain for itself all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the site shall be at the Tenderer's own expense. A Tenderer wishing to visit the project site must coordinate its visit with the Employer beforehand.
- 6.4 The Tenderer's designated representative is invited to attend a pre-tender meeting to be held on *[indicate date and time]* at *[indicate place]*. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 6.5 The Tenderer is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than one week before the meeting.
- 6.6 Minutes of the pre-tender meeting, including the text of the questions raised without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have obtained the Tender Document. Any changes to the Tender Document that may become necessary as a result of the pre-tender meeting shall be made by the Employer exclusively through the issue of an Addendum and not through the minutes of the pre-tender meeting.
- 6.7 Nonattendance at the pre-tender meeting will not be a cause for disqualification of a Tenderer.

<i>Delete ITT 6.4 – 6.7 if no pre-tender meeting is planned.</i>
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7. **Language of Tender**
- 7.1 Tenders from foreign companies should be prepared in English with translation in local language. Tenders from local companies should be prepared in local language with translation in English. The supporting documents do not need to be translated.
8. **Documents Comprising the Tender**
- 8.1 The Tender shall comprise the following:
- (a) Letter of Tender in a form furnished in Section III, Tender Forms;
- (b) completed Price Schedules as provided in Section III, Tender Forms;

- (c) Tender-Securing Declaration, in accordance with ITT 15;
- (d) written confirmation authorising the signatory of the Tender to commit the Tenderer;
- (e) documentary evidence establishing the eligibility of the Plant and Related Works offered by the Tenderer, in accordance with ITT 13;
- (f) documentary evidence establishing the Tenderer's qualifications in accordance with the requirements of Section II, Evaluation and Qualification Criteria, using the relevant forms furnished in Section III, Tender Forms;
- (g) documentary evidence establishing the conformity of the Plant and Related Works offered by the Tenderer with the Tender Document, using the relevant forms furnished in Section III, Tender Forms;
- (h) in the case of a tender submitted by a JVCA, JVCA agreement, indicating at least the parts of the Employer's Requirements to be executed by the respective partners.

9. Alternative Tenders

- 9.1 Alternative technical proposals *[insert "shall" or "shall not"]* be considered for *[insert names of parts for which alternative proposals will be considered]*. *[Remove the following sentence and ITT 9.2 below if alternative proposals are not considered]* The method of evaluation of alternative proposals shall be as stipulated in Section II, Evaluation and Qualification Criteria.
- 9.2 Tenderers wishing to offer technical alternatives to the requirements of the Tender Document must first price the Employer's requirements as described in the Tender Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer.

10. Tender Prices and Discounts

- 10.1 The prices and discounts quoted by the Tenderer in the Letter of Tender and in the Price Schedules shall be fixed.
- 10.2 The Tenderer shall quote prices as required in each Price Schedule included in Section III, Tender Forms. Notwithstanding with any other provision in this tender documentation the Plant to be supplied from abroad shall be delivered DDP at Site (Incoterms) and the Plant to be supplied from within the country shall be delivered at Site. The Tenderer shall quote the price of the Plant the following way:
- (a) for Plant delivered from abroad tender price shall be DDP at Site;
 - (b) for Plant delivered from inside the country tender price shall be – delivered at Site. Site is located in *[indicate the country, city and facility or organization]*

The Related Site Works can include the preparation of installation drawings, arrival inspection, decommissioning of the equipment to be replaced, installation of the Plant, putting installed equipment into operation, commissioning of Plant to the Employer, and other works required by the Technical Specifications and Price Schedules. Price of the Related Works including travelling, daily allowance, accommodation and other related side costs shall be included in the tender.

- 10.3 Prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation which is not consistent with this paragraph will be rejected by the Employer as non-responsive.

11. Currency of Tender

- 11.1 All prices quoted by the Tenderer shall be in Euro or local currency; currency for payment shall be the same as quoted by the Tenderer in its Tender.

12. Documents Establishing the Qualifications of the Tenderer

- 12.1 To establish its qualifications to perform the Contract in accordance with Section II, Evaluation and Qualification Criteria, the Tenderer shall provide the information requested in Section III, Tender Forms.

- 12.2 The Tenderer shall submit the Manufacturer's Authorisation, using the form included in Section III, Tender Forms where the Tenderer does not manufacture or produce the Plant it offers to supply, for the Plant items identified in Section IV, Employer's Requirements as such, for which the Authorisation should be provided.
- 12.3 The Tenderer shall submit evidence that it will be represented by an Agent in the country, equipped and able to carry out the Contractor's maintenance, repair and spare parts-stocking obligations prescribed in the Contract, where a Tenderer does not conduct business within the Employer's Country.
- 13. Documents Establishing the Eligibility of Plant and Related Works**
- 13.1 To establish the eligibility of the Plant and Works, Tenderers shall complete the forms, included in Section III, Tender Forms.
- 13.2 The Tenderer must provide the following documentary evidence to establish the conformity of the Plant and Related Works:
- The documentary evidence of the Plant's and Related Works' conformity to the tender documents may be in the form of literature, drawings and data, and shall consist of:
- (a) a detailed description of the essential technical and performance characteristics of the Plant and Related Works;
 - (b) a list giving full particulars, including available sources and current prices, of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Plant for a period of 3 years, following commencement of the use of the Plant by the Employer; and
 - (c) a paragraph-by-paragraph commentary on the Employer's Requirements demonstrating substantial responsiveness of the Plant and Related Works to those specifications or a statement of deviations and exceptions to the provisions of the Employer's Requirements.
- 14. Period of Validity of Tenders**
- 14.1 Tenders shall remain valid [*insert number – usually 90*] days after the tender submission deadline date. A tender valid for a shorter period shall be rejected as non-responsive.
- 14.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Employer may request Tenderers to extend the period of validity of their tenders. The request and the responses shall be made in writing. A Tenderer may refuse the request. A Tenderer granting the request shall not be required or permitted to modify its tender, except as provided in ITT 14.3.
- 14.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Tender validity, the Contract price shall be adjusted as specified in the request for extension. Tender evaluation shall be based on the Tender Price without taking into consideration the above adjustment.
- 15. Tender-Securing Declaration**
- 15.1 The Tenderer shall furnish as part of its tender the original of a Tender-Securing Declaration using the respective form included in Section III, Tender Forms.
- 15.2 Any Tender not accompanied by a Tender-Securing Declaration shall be rejected by the Employer as non-responsive.
- 16. Format and Signing of Tender**
- 16.1 The Tenderer shall prepare one original of the documents comprising the tender and clearly mark it "ORIGINAL". In addition, the Tenderer shall submit [*insert number*] copies of the tender and clearly mark them "COPY". In the event of any discrepancy between the original and the copies, the original shall prevail.
- In addition, the Tenderer shall include into its Tender an electronic form of tender documents in a PDF format on a USB flash drive (memory stick).
- 16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person duly authorised to sign on behalf of the Tenderer. This authorisation shall be confirmed by the Tenderer's statutory documents attached to the Tender.

16.3 A Tender submitted by a JVCA shall comply with the following requirements:

- (a) It shall be signed so as to be legally binding on all partners and
- (b) Include the Representative's authorisation, consisting of a power of attorney signed by those legally authorised to sign on behalf of the JVCA.

C. Submission and Opening of Tenders

17. Submission, Sealing and Marking of Tenders

17.1 Tenderers may always submit their Tenders by mail or by hand. Procedures for submission, sealing and marking are as follows:

- a) Tenderers submitting Tenders by mail or by hand shall enclose the original and copies of the Tender in separate sealed envelopes.
- b) Address of the Employer *[insert the address]*.

17.2 The inner and outer envelopes shall:

- a) bear the name and address of the Tenderer;
- b) be addressed to the Employer;
- c) bear the specific identification of this Tendering process pursuant to ITT 1.1; and
- d) bear a warning: "Do not to open before *[insert the time and date for Tender opening]*".

17.3 If envelopes and packages are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the Tender.

18. Deadline for Submission of Tenders

18.1 Tenders must be received by the Employer at the address and no later than *[insert the date and time for Tender opening]*.

19. Tender Opening

19.1 The Employer shall conduct the Tender opening in public, in the presence of Tenderers' designated representatives and anyone who choose to attend, and at the address specified in ITT 17.1(b) above immediately after deadline specified for submission of tenders in ITT 18.1 above. Tender opening shall be carried out in line with procedure described in NEFCO's Tender Evaluation Guide.

D. Examination of Tenders

20. Confidentiality

20.1 Information relating to the evaluation of Tenders shall not be disclosed to Tenderers or any other persons not officially concerned with such process until information on Contract award is communicated to all Tenderers.

20.2 Any attempt by a Tenderer to influence improperly the Employer in the evaluation of the Tenders or Contract award decisions may result in the rejection of its Tender.

20.3 Notwithstanding ITT 20.1, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Employer on any matter related to the Tendering process, it should do so in writing.

21. Clarification of Tenders

21.1 The Employer may, at its discretion, ask any Tenderer for a clarification of its Tender to be provided within *[insert number]* days. The Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be

sought, offered, or permitted, except to confirm the correction of mathematical errors discovered by the Employer in the evaluation of the Tenders.

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

22. Determination of Responsiveness

22.1 The Employer's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 8.

22.2 A substantially responsive Tender is one that meets the requirements of the Tender Document without material deviation, reservation, or omission.

(a) "Deviation" is a departure from the requirements specified in the Tender Document;

(b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document; and

(c) "Omission" is the failure to submit part or all of the information or documentation required in the Tender Document.

22.3 A material deviation, reservation, or omission is one that,

(a) if accepted, would:

(i) affect in any substantial way the scope, quality, or performance of the Employer's Requirements as specified in Section IV; or

(ii) limit in any substantial way, inconsistent with the Tender Document, the Employer's rights or the Tenderer's obligations under the proposed Contract; or

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

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

22.5 Provided that a Tender is substantially responsive, the Employer may waive any quantifiable nonconformity in the Tender that does not constitute a material deviation, reservation or omission. The cost of all quantifiable deviations or omissions shall be added to the tender price in question. A reasonable estimate of the cost will be made by the Employer, taking into consideration the corresponding tender prices of other responsive tenderers or other appropriate market prices. Such costs will be at the Employer's sole discretion. A Tenderer will not be requested or permitted to offer a price adjustment for rectifying such deviations or omissions.

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

E. Tender Evaluation and Comparison

23. Qualification of the Tenderer

23.1 The Employer shall determine whether the Tenderers meet the qualifying criteria specified in Section II, Evaluation and Qualification Criteria. Tenders not meeting the qualification criteria shall be rejected.

24. Evaluation of Tenders and Correction of Mathematical Errors

24.1 The Employer shall use the criteria and methodologies indicated in Section II, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted.

- 24.2 Provided that the Tender is substantially responsive, the Employer shall correct mathematical errors as indicated in Section II, Evaluation and Qualification Criteria.
- 24.3 If a Tenderer does not accept the correction of errors, its Tender shall be declared non-responsive.
- 24.4 In the event that a tender during the evaluation process is identified as abnormally low, a clarification process shall be initiated allowing for the bidder to prove its ability to perform the contract at the offered price. If the tenderer is unable to demonstrate such ability beyond reasonable doubt, the tender may be rejected subject to prior no-objection by NEFCO.
- 25. Tender Adjustments** 25.1 For the evaluation and comparison purposes the Employer shall adjust the Tender prices using the methodology specified in ITT 22.5 above.
- 26. Employer's Right to Accept Any Tender, and to Reject Any or All Tenders** 26.1 The Employer reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to contract award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenders submitted shall be promptly returned to the Tenderers.

F. Award of Contract

- 27. Award Criteria** 27.1 The Employer shall award the Contract to the Tenderer whose offer has been determined to be the lowest evaluated Tender and substantially responsive to the Tender Document, provided further that the Tenderer is determined to be qualified to perform the Contract satisfactorily.
- 28. Variation of quantities at time of award** 28.1 At the time the Contract is awarded, the Employer reserves the right to increase or decrease the quantity of Plant and Related Works originally specified in Section IV, Employer's Requirements up to [*indicate percentage – usually 15%*], and without any change in the unit prices or other terms and conditions of the Tender and the Tender Document.
- 29. Notification of Award** 29.1 Prior to the expiration of the period of Tender validity, the Employer shall notify the successful Tenderer, in writing, that its Tender has been accepted.
- 29.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding contract.
- 29.3 At the same time, the Employer shall also notify all other Tenderers of the results of the Tendering, identifying the name of the winning Tenderer, and the price it offered. After receiving the notification of the results of tendering, the unsuccessful Tenderers may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their Tenders were not selected. The Employer shall promptly respond in writing to any unsuccessful Tenderer who requests a debriefing.
- 30. Signing of Contract** 30.1 Promptly upon notification, the Employer shall send the successful Tenderer the Contract Agreement.
- 30.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Employer.
- 31. Performance Security** 31.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Tenderer shall furnish the Performance Security in accordance with the conditions of contract.
- 31.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award. In that event the Employer may award the contract to the next lowest priced evaluated Tenderer whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract Agreement satisfactorily.

Delete ITT 31 entirely if Performance Security is not required.

Section II. Evaluation and Qualification Criteria

Boxed guidance notes and provisions in italics font are illustrative provisions containing instructions and guidance which the drafter should follow. They are not part of the text and should not be included in the final tender document.

This Section contains all the criteria that the Employer shall use to evaluate tenders and qualify Tenderers. In accordance with ITT 24.1, no other factors, methods or criteria shall be used. The Tenderer shall provide all the information requested in the forms included in Section III, Tender Forms.

A. Evaluation Criteria and Methodology

ITT 24.1 The evaluation of Tenders and the correction of mathematical errors shall be undertaken by the Employer in accordance with the following methodology:

1) Establishing the Qualification

The Employer shall establish whether the Tenderers are qualified to perform the Contract in accordance with the provisions of Section B: Qualification Criteria below. If the Tenderer is determined to be qualified to perform the Contract in accordance with ITT 24.1 the Tenderer shall be determined as eligible for Contract award.

2) Discounts

The Employer will adjust the Tender Price, using the methodology prescribed by the Tenderer in its Letter of Tender, to take account of the Discounts offered by the Tenderer as read out during the Tender Opening.

In the event of any ambiguity in the Tenderer's methodology, the benefit of the doubt shall be given to the Employer. If a Tenderer does not accept the Employer's determination, its tender shall be declared non-responsive.

3) Correction of Mathematical Errors

(a) Where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly;

(b) 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;

(c) 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

(d) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to a mathematical error, in which case the amount in figures shall prevail subject to (a) and (b) above.

4) Detailed Evaluation

The cost of VAT (as stated in the Letter of Tender) shall be excluded from the tender prices for evaluation and comparison purposes. Following the completion of 1), 2) and 3) above, the Employer shall subject only the lowest priced tender to a detailed evaluation to determine whether

the tender is substantially responsive to the tender documents in accordance with the provisions of ITT 22. In doing so, the Employer shall follow the procedure described in NEFCO's Tender Evaluation Guide for Works, Goods and Related Services.

5) **Reassessment of Tender Ranking**

In the event that the lowest priced tender is determined to be substantially responsive in accordance with the provisions of ITT 22, the Employer shall establish whether it contains a quantifiable deviation or omission in accordance with ITT 22.5 and whether after adding the cost of the deviation to the evaluated tender price it remains the lowest priced tender. If not, then the Employer shall subject the second lowest priced tender to the same detailed evaluation and so forth.

B: Qualification Criteria

Boxed guidance notes and provisions in italics font are illustrative provisions containing instructions and guidance which the drafter should follow. They are not part of the text and should not be included in the final tender document.

ITT 23.1 To be qualified for contract award in accordance with ITT 23.1, the Tenderer (individually, or JVCA collectively) must demonstrate to the Employer that it substantially satisfies the requirements regarding eligibility, experience and financial position specified below:

a) **Eligibility**

EXAMPLE:

Tenderers shall meet the eligibility requirements set forth in ITT 4 (as evidenced from Letter of Tender):

- Not having conflicts of interests as described in ITT 4.3;
- Not having been declared ineligible due to non-compliance with requirements described in ITT 4.4.

b) **Financial Situation**

i) **Average Annual Turnover**

EXAMPLE:

Average annual turnover over the last *[insert number]** years exceeded EUR *[insert value]* ** equivalent. In case of tender submitted by JVCA, the leading partner should demonstrate at least 50% compliance with the requirement.

**This period is normally three (3) years, but may be less if special circumstances warrant it.*

***Usually not less than 2.5 times the estimated annual cash flow in the proposed contract (based on a straight-line projection). The coefficient may be smaller for very small contracts, but not less than 1.5, and should take into consideration special country circumstances.*

ii) **Financial Resources**

EXAMPLE:

The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means sufficient to meet the production cash flow for the contract estimated as not less than EUR *[insert value]** equivalent, taking into account the Tenderer's commitments for other contracts.

**Usually equivalent to the estimated cost of the contract. The financial resources qualification criterion shall be calculated taking into account the method and schedule of payments proposed by the Employer. Under the supply of Plant contracts, the bulk of payment (80% of the contract price) would normally be released by the Employer to the Contractor upon shipment of the Plant. In order to satisfy the negative cash flow arising under such contract, the Contractor would have to mobilise financial resources which would be almost equivalent to the Contract Price.*

c) **Experience**

EXAMPLE:

Experience as Contractor, in at least *[insert number]** contracts within the last *[insert number]*** years, each with a value of at least *[insert the amount and currency]****, that have been successfully and substantially completed and that are similar to the scope of the proposed Plant and Related Works.

** Usually at least three (3) contracts for the delivery of Plant required under the contract or similar;*

*** This period is normally five (5) years, but may be less if special circumstances warrant it;*

**** Usually not less than 80% of the estimated cost of the contract.*

Section III. Tender Forms

List of Tender Forms

Letter of Tender

Covenant of Integrity

Forms of Price Schedules

Form of Tender-Securing Declaration

Manufacturer's Authorisation

Tenderer Information Sheet

Partner to JVCA Information Sheet

Average Annual Turnover

Financial Resources

Current Contract Commitments

Experience

Experience (cont.)

Letter of Tender

Note for Tenderers: *The Tenderer must prepare the Letter of Tender and Covenant of Integrity on stationery with its letterhead clearly showing the Tenderer's complete name and address. All text within square brackets [] is for guidance in preparing this form and shall be deleted by the Tenderer from the final document.*

Date: _____

Tender No.: _____

Alternative No.: _____

To: _____

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tender Document, including any amendments to Tender Documents issued in accordance with ITT 8 prior to the deadline for submission of Tenders defined in ITT 18.1;
- (b) We offer to supply, in conformity with the Tender Document, the following Plant and Related Works:.....
- (c) The total price of our Tender (without VAT), excluding any discounts offered in item (e) below is:
.....
(in words and in numbers)
- (d) Amount of VAT is:
.....
(in words and in numbers)
- (e) The discounts offered and the methodology for their application are:
.....
.....
- (f) Our tender shall be valid for the period[*insert validity period as specified in ITT14.1*] days from the date fixed for the Tender submission deadline in accordance with the Tender Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (g) If our tender is accepted, we commit to furnish a performance security in accordance with the Tender Document;
- (h) Our firm, including any subcontractors or suppliers and sub-suppliers for any part of the Contract are eligible in accordance with ITT 4.2;
- (i) We, including any subcontractors or suppliers and sub-suppliers for any part of the Contract have no conflict of interest in accordance with ITT 4.3;
- (j) We are not participating, as a Tenderer or as a subcontractor, in more than one Tender in this Tendering process, other than alternative offers submitted in accordance with ITT 9;
- (k) Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers and sub-suppliers for any part of the contract—have not been declared ineligible by NEFCO, another international financial institution, under the Employer's country laws or official regulations or by an act of compliance with a decision of the European Union and/or United Nations Security Council;
- (l) We are not a government-owned entity / We are a government-owned entity [*use one of the two options as appropriate*] but we meet the requirement stated in ITT 4.3;
- (m) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the Tendering process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(If no one has been paid or is to be paid, indicate "No One.")

- (n) We understand that this tender, 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.
- (o) We understand that you are not bound to accept the lowest evaluated tender or any other tender that you may receive.

Name:

.....

In the capacity of:

.....

Signed:

.....

Duly authorised to sign the Tender for and on behalf of:

.....

Date:

.....

Covenant of Integrity

to *[Name of Employer]*]
 from *[Name of Tenderer]*]

“We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners or sub-contractors (“the **Parties**”), where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Practices (as defined below) in connection with the tendering process or in the execution or supply of any works, goods or services for *[specify the contract or tender invitation]* (the “**Contract**”) and covenant to so inform you if any instance of any such Prohibited Practices shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant of Integrity (the “**Covenant**”).

We shall, for the duration of the tender process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

If any of the Parties, where these exist and as applicable, (i) have been convicted in any court of any offence involving Prohibited Practices in connection with any tendering process or provision of works, goods or services during the five (5) years immediately preceding the date of this Covenant, or (ii) have been dismissed or resigned from any employment on the grounds of being implicated in any Prohibited Practices, or (iii) have been excluded from participation in a tendering procedure on the grounds of Prohibited Practices by Nordic Environment Finance Corporation (NEFCO) or by any national or EU institutions or any international financial institution or the United Nations’ Security Council, we shall give details of any event in (i)-(iii) above together with details of the measures that we have taken, or shall take, to ensure that no Party will commit any Prohibited Practices in connection with the Contract *[give details if necessary]*.

In the event that we are awarded the Contract, we grant the Purchaser/Client/Employer/NEFCO and auditors appointed by either of them, as well as any authority or body having competence under relevant legislation, the right of inspection of our records and those of all our sub-contractors under the Contract. We accept to preserve these records generally in accordance with applicable law but in any case for at least six (6) years from the date of performance of the Contract.”

For the purpose of this Covenant, “Prohibited Practices” includes:

- **Corrupt Practice** meaning the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- **Fraudulent Practice** meaning any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- **Coercive Practice** meaning impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence improperly the actions of a party.
- **Collusive Practice** meaning an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
- **Obstructive Practice** meaning (a) deliberately destroying, falsifying, altering or concealing of evidence material to an investigation related to the Contract; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to such investigation or from pursuing the investigation, or (b) acts intended to materially impede the exercise of NEFCO’s contractual rights of audit or access to information or the rights that any relevant authority has in accordance with any law, regulation or treaty.
- **Money Laundering** meaning
 - (i) the conversion or transfer of property, knowing that such property is derived from criminal activity or participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such activity to evade the legal consequences of his action;
 - (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from participation in such activity;
 - (iii) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from participation in such activity;

(iv) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling any of the actions mentioned in the foregoing points.

- **Financing of terrorism** meaning the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of the Council of the European Union Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.

- **Theft** meaning the misappropriation of property belonging to another party.

Date:

Signature:

[Name and position]

for and on behalf of

[Name of the firm or joint venture]

Forms of Price Schedules

EXAMPLE:

PREAMBLE

General

1. Price Schedules shall be completed in the format, manner and detail indicated below. Tenderers shall be deemed to have read the Technical Specifications and other volumes of the tender documents and to have reviewed the Drawings to ascertain the full scope of the requirements included in each item. The entered rates and prices shall be deemed to include the full scope as aforesaid, including overheads and profit.
2. If the Tenderer is unclear or uncertain as to the scope of any item, he shall seek clarification in accordance with the Instructions to Tenderers in the tender documents prior to submitting his tender.

Pricing

3. Prices shall be entered in indelible ink, and any alterations necessary due to errors etc. shall be initialled by the Tenderer.
4. Tender prices shall be quoted in the manner indicated and in the currency specified in the tender documents.
For each item, Tenderers shall complete each appropriate column in the Schedules, giving the price breakdown as indicated in the Schedules.
Prices given in the Schedules for each item shall be for the scope covered by that item as detailed in the Employer's Requirements, Drawings or elsewhere in the tender documents.
5. Where there are discrepancies between the total of the amounts in the column for the price breakdown and the amount in the column for the total price, the former shall prevail and the latter will be corrected accordingly.
Where there are discrepancies between amounts stated in figures and amounts stated in words, the amounts stated in words shall prevail.
6. Items left blank will be deemed to have been included in prices for other items.
7. The total for each Price Schedule and the total of the Summary shall be deemed to be the total price for executing the Plant and Related Works thereof in complete accordance with the Contract, whether or not each individual item has been priced.
8. When requested by the Employer for the purposes of making payments or partial payments, calculating variations or evaluating claims, or for such other purposes as the Employer may reasonably require, the Contractor shall provide the Employer with a breakdown of any composite or lump sum items included in the Schedules.

Price Schedule #1: Plant and Materials to be supplied

Date: _____

Tender: _____

Name of the Tenderer: _____

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
Item	Description	Unit	Q-ty	Unit price w/o VAT: DDP or at site (EUR or LC*)	Total price w/o VAT: DDP or at site (EUR or LC*) (4 x 5)
Total amount without VAT (to be carried to Summary Schedule)					
VAT (to be carried to Summary Schedule)					

*Note: * LC means the local currency*

Name

In the capacity of

Signed:

Duly authorised to sign the tender for and on behalf of _____

Dated on _____ day of _____, _____.

EXAMPLE:**Price Schedule #2: Related Works to be Executed**

Date: _____

Tender No.: _____

Name of the Tenderer: _____

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
Item	Description	Unit	Q-ty	Unit price w/o VAT (EUR or LC*)	Total price w/o VAT (EUR or LC*) (4 x 5)
Total amount without VAT (to be carried to Summary Schedule)					

VAT (to be carried to Summary Schedule)	
--	--

Note: * LC means the local currency

Name

In the capacity of

Signed

Duly authorised to sign the tender for and on behalf of _____

Dated on _____ day of _____, _____.

EXAMPLE:**Summary Price Schedule**

Date: _____

Tender: _____

Name of the Tenderer: _____

<i>1</i>	<i>2</i>	<i>3</i>
Item	Description	Total price w/o VAT: DDP or at site (EUR or LC*)
1	Price Schedule #1: Plant and Materials to be Supplied	
2	Price Schedule #2: Related Works to be Executed	
Total amount without VAT (to be carried to Tender Form)		
VAT (to be carried to Tender Form)		

Note: *LC means the local currency

Name

In the capacity of

Signed

Duly authorised to sign the tender for and on behalf of _____

Dated on _____ day of _____, _____.

Form of Tender-Securing Declaration

We, the undersigned, declare that:

We understand that, according to your conditions, tenders must be supported by a Tender-Securing Declaration.

We accept that we will automatically be suspended from being eligible for tendering in any contract financed wholly or in part by NEFCO for the period of time of three (3) years starting on the date when we have breached our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Tender during the period of tender validity specified in the Letter of Tender; or
- (b) having been notified of the acceptance of our Tender by the Employer during the period of tender validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITT 31.

Name of the Tenderer* _____

Name of the person duly authorized to sign the Tender on behalf of the Tenderer** _____

Title of the person signing the Tender _____

Signature of the person named above _____

Date signed _____ day of _____, _____

*: In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer

** : Person signing the Tender shall have the power of attorney given by the Tenderer attached to the Tender

[Note: In case of a JVCA, the Tender-Securing Declaration must be in the name of all members to the Joint Venture that submits the tender.]

Manufacturer's Authorisation

Note for Tenderer: *The Tenderer shall require the Manufacturer to fill in this Form in accordance with the instructions indicated, for the items of Plant, for which the submission of this Form is required by Employer's Requirements (Section IV). This letter of authorisation should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Tenderer shall include it in its Tender if so indicated in the ITT 12.2. All text within square brackets [] is for use in preparing this form and shall be deleted from the final document.*

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

Tender No.: [insert number of Tendering process]

To: [insert complete name of Employer]

WHEREAS

We [insert complete name of Manufacturer], who are official manufacturers of [insert type of Plant manufactured], having factories at [insert full address of Manufacturer's factories], do hereby authorise [insert complete name of Tenderer] to submit a Tender the purpose of which is to provide the following Plant, [insert name and or brief description of the Plant], manufactured by us and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 20.1 of General Conditions of Contract, with respect to the Plant offered by the above firm.

Signed: [insert signature(s) of authorised representative(s) of the Manufacturer]

Name: [insert complete name(s) of authorised representative(s) of the Manufacturer]

Title: [insert title]

Duly authorised to sign this Authorisation on behalf of: [insert complete name of Manufacturer]

Dated on _____ day of _____, _____ [insert date of signing]

Tenderer's Qualification

To establish its qualifications to perform the contract in accordance with Section II, Evaluation and Qualification Criteria, the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

Tenderer Information Sheet

Date: _____

Tender No.: _____

Page _____ of _____ pages

1. Tenderer's Legal Name
2. In the case of a JVCA, the legal name of each partner:
3. Tenderer's Country of Constitution, Incorporation, or Registration:
4. Tenderer's Year of Constitution, Incorporation, or Registration:
5. Tenderer's Legal Address in Country of Constitution, Incorporation, or Registration and address of main business operations if different from the Legal Address:
6. Tenderer's Authorised Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1 above. <input type="checkbox"/> In case of government-owned entity from the Employer's Country, documents establishing legal and financial autonomy and compliance with the principles of commercial law.

Partner to JVCA Information Sheet

Date: _____

Tender No.: _____

Page _____ of _____ pages

1. Tenderer's Legal Name:
2. JVCA Partner's Legal Name ² :
3. JVCA Partner's Country of Constitution, Incorporation, or Registration:
4. JVCA Partner's Year of Constitution into a legally-enforceable JVCA:
5. JVCA Partner's Legal Address in Country of Constitution, Incorporation, or Registration and address of main business operations if different from the Legal Address:
6. JVCA Partner's Authorised Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Constitution, Incorporation or Registration of firm named in 1 above. <input type="checkbox"/> In case of government-owned entity from the Employer's Country, documents establishing legal and financial autonomy and compliance with the principles of commercial law.

² The form to be provided for each partner of JVCA.

Average Annual Turnover

Tenderer's Legal Name: _____

Date: _____

JVCA Partner Legal Name: _____

Tender No.: _____

Page _____ of _____ pages

Annual turnover data*		
Year	Amount and Currency	Euro equivalent
**Average Annual Turnover		

Notes:

***Attached are copies of tax certificates and financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:**

- (a) Must reflect the financial situation of the Tenderer or partner to a JVCA, and not sister or parent companies;
- (b) Historic financial statements must be audited by a certified accountant;
- (c) Historic financial statements must be complete, including all notes to the financial statements;
- (d) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

**Average annual turnover calculated as total certified payments received for supply in progress or completed, divided by the number of years specified in Section II, Evaluation and Qualification Criteria, ITT 23.1(b)(i).

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 cash flow demands of the subject contract or contracts as indicated in Section II, Evaluation and Qualification Criteria.

Source of financing	Amount (Euro equivalent)
1.	
2.	
3.	
4.	

Current Contract Commitments

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

Name of contract	Employer, contact address, telephone & email	Value of outstanding supply (current Euro equivalent)	Estimated completion date	Average monthly invoicing over last six months (Euro/month)
1.				
2.				
3.				
4.				
5.				
etc.				

Experience

Tenderer's Legal Name: _____

Date: _____

JVCA Partner's Legal Name: _____

Tender No.: _____

Page _____ of _____ pages

Similar Contract No. [insert specific number] of [total number of contracts] required	Information	
Contract Identification		
Award date		
Completion date		
Role in Contract		
Total Contract amount		Euro
If a partner in a JVCA, specify participation in total contract amount	_____ %	Euro _____
Employer's Name:		
Address:		
Telephone:		
E-mail:		

Experience (cont.)

Tenderer's Legal Name: _____

Page _____ of _____ pages

JVCA Partner's Legal Name: _____

Similar Contract No. <i>[insert specific number]</i> of <i>[total number of contracts]</i> required	Information
Description of the similarity in accordance with ITT 23.1(c) of Section II, Evaluation and Qualification Criteria:	
Amount	
Physical size	
Complexity	
Technology	

Section IV. Employer's Requirements

1. List of Plant and Related Works

The list of Plant, related Works and mandatory spare parts to be inserted in the Tender documents by the Employer, as applicable prior to issue of the Tender Document. Tables to be expanded as necessary.

EXAMPLE:

<u>1.1 List of Plant</u>			
<u>List No.</u>	<u>Name of Plant</u>	<u>Brief Description</u>	<u>Quantity</u>
1	Boiler XXX*

*Items, for which Tenderer is required to submit Manufacture's Authorisation per the Form provided in Section III, Tender Forms.

EXAMPLE:

<u>1.2 List of Related Works</u>			
<u>List No.</u>	<u>Name of Related Works</u>	<u>Brief Description</u>	<u>Quantity</u>

EXAMPLE:

<u>1.3 List of Mandatory Spare Parts</u>			
<u>List No.</u>	<u>Name of mandatory spare parts</u>	<u>Brief Description</u>	<u>Quantity</u>

2. Delivery and Completion Schedule

Text of Delivery and Completion Schedules to be inserted in the Tender documents by the Employer, as applicable prior to the issue of the Tender Document.

The required date of arrival on the Project Site is no later than: _____.

The required completion date is no later than: _____.

Name of Plant or Related Works	Delivery Schedule (dd/mm/yyyy)

3. Technical Specifications and Statement of Compliance

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

Wherever appropriate, standardised general technical specifications covering workmanship, materials, manufacturing, quality assurance and testing should be used with deletions or addenda for the particular procurement.

Care must be taken in drafting specifications to ensure that they are not restrictive. Recognised international standards should be used wherever possible. Where other particular standards are used, i.e. national standards of the Employer's Country, the specifications should clearly state that equipment, materials, and workmanship that meet other authoritative standards, and which ensure at least a substantially equal quality or performance as the standards mentioned, will also be acceptable. Reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable they should always be followed by the words "or equivalent".

Item No.	Technical Specification	Statement of Compliance with Comments*
	* Tenderers must provide the following details in the space provided: Manufacturer name, make, model, 'comply' or 'not comply' as appropriate, and if 'not-comply' all technical deviations must be clearly set out alongside the appropriate line in the specification. Comments such as "blanket compliance" are not acceptable. Compliance statements shall be supported by manufacturers' leaflets or readable photocopies. <u>A completed 'Technical Specifications and Statement of Compliance' must be submitted as a part of the Tenderer's Tender.</u>	
1	<i>[Insert name of item and required technical specifications]</i>	Manufacturer: _____ Make: _____ Model: _____ (these details must be provided for <u>all</u> items)
2		
3	Related Services	

EXAMPLE:

Equivalence of Standards and Codes

Wherever reference is made in the Technical Specifications to specific standards and codes to be met by the Plant and materials to be furnished or tested, the provisions of the latest current edition or revision of the relevant standards or codes in effect shall apply, unless otherwise expressly stated in the Specifications. Where such standards and codes are national or related to a particular country or region, other authoritative standards that ensure substantial equivalence to the standards and codes specified will be acceptable.

4. Drawings

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

It is customary to bind the drawings in a separate volume, which is often larger than the other volumes of documents. The size will be dictated by the scale of the drawings, which must not be reduced to the extent that details are rendered illegible.

Where appropriate, the Employer should attach other pertinent documentation such as drawings, diagrams, site plan, etc. which would assist Tenderers to submit a responsive Tender.

The Contractor may be requested to provide drawings or samples either with its Tender or more commonly, for review prior to delivery during contract implementation.

Section V. General Conditions of Contract

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

1. General Provisions

1.1 Definitions

In the Conditions of Contract (“these Conditions”), which include the Particular Conditions and these General Conditions, the following words and expressions shall have the following stated meanings.

Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

1.1.1.1 “Contract” means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

1.1.1.2 “Contract Agreement” means the contract agreement referred to in Sub-Clause 1.5 [Contract Agreement].

“Contract Documents” mean the documents listed in the Contract Agreement, including any amendments thereto.

“Contract Price” means the price payable to the Contractor as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

“Completion” means the fulfillment of the Related Works by the Contractor in accordance with the terms and conditions set forth in the Contract.

1.1.1.3 “Letter of Acceptance” means the letter of formal acceptance, signed by the Employer, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties.

1.1.1.4 “Letter of Tender” means the document entitled Letter of Tender, which was completed by the Contractor and includes the signed offer to the Employer for the Plant.

1.1.1.5 “Specification” means the document entitled Technical Specification and Statement of Compliance, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Plant.

1.1.1.6 “Drawings” means the drawings of the Plant, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.

1.1.1.7 “Schedules” means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document(s) may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.1.1.8 “Tender” means the Letter of Tender and all other documents, which the Contractor submitted with the Letter of Tender, as included in the Contract.

1.1.1.9 “GCC” means the General Conditions of Contract.

1.1.1.10 “PCC” means the Particular Conditions of Contract.

1.1.2 Parties and Persons

1.1.2.1 “Party” means the Employer or the Contractor, as the context requires.

1.1.2.2 “Employer” means the person named as Employer in the PCC and the legal successors in title to this person.

- 1.1.2.3 “Contractor” means the person(s) named as Contractor in the Letter of Tender accepted by the Employer and the legal successors in title to this person(s).
- 1.1.2.4 “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Plant or the Related Works; and the legal successors in title to each of these persons.
- 1.1.2.5 “NEFCO” means the Nordic Environment Finance Corporation.
- 1.1.2.6 “Borrower” means the entity named in the PCC as the borrower or a grant beneficiary or a grantee.
- 1.1.3 **Money and Payments**
- 1.1.3.1 “Contract Price” means the price payable as specified in the Contract Agreement, and includes adjustments as may be made in accordance with the Contract.
- 1.1.4 **Plant**
- 1.1.4.1 “Plant” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Contractor is required to supply to the Employer under the Contract.
- 1.1.4.2 “Related Works” means the Works incidental to the supply of the Plant, such as insurance, transportation, designing, installation or supervision of installation, commissioning, training and initial maintenance and other such obligations of the Contractor under the Contract.
- 1.1.5 **Other Definitions**
- 1.1.5.1 “Employer’s Country” is the country specified in the PCC.
- 1.1.5.2 “Eligible Countries” means any country not subject to payment or import restrictions as a consequence of EU sanctions or a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.
- 1.1.5.3 “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.5.4 “Project Site,” where applicable, means the place named in the PCC.
- 1.1.5.5 Incoterms
- (a) Unless inconsistent with any provisions in the Contract, the meaning of any trade term and the rights and obligations of Parties thereunder shall be as prescribed by Incoterms.
- (b) The Incoterms, when used, shall be governed by the rules prescribed in the edition of Incoterms, specified in the PCC.
- 1.2 **Communication**
- Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the PCC. Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed.
- 1.3 **Law and language**
- The Contract shall be governed by the law of the country or other jurisdiction stated in the PCC.
- The ruling language of the Contract shall be that stated in the PCC.
- 1.4 **Priority of Documents**
- The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:
- (a) the Contract Agreement,
- (b) the Letter of Acceptance,

- (c) the Letter of Tender,
- (d) the Particular Conditions,
- (e) these General Conditions,
- (f) the Specification,
- (g) the Drawings, and
- (h) the Schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Employer shall issue any necessary clarification or instruction.

1.5 Contract Agreement

The Parties shall enter into a Contract Agreement within twenty-eight (28) days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the form annexed to the Particular Conditions. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

1.6 Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party.

1.7 Copyright

The copyright in all drawings, documents, and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor, or, if they are furnished to the Employer directly or through the Contractor by any third Party, including suppliers of materials, the copyright in such materials shall remain vested in such third Party.

1.8 Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws.

1.9 Inspections and Audit by NEFCO

The Contractor shall permit NEFCO and/or persons appointed by NEFCO to inspect the Project Site and/or the Contractor's (including its sub-suppliers, contractors, subcontractors, consultants or subconsultants) accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by NEFCO if required by NEFCO.

The Contractor shall maintain all documents and records related to the Contract in accordance with applicable law but in any case for at least six (6) years from the date of substantial performance of the Contract.

The Contractor shall provide any documents necessary for the investigation of allegations of Prohibited Practices and require its employees or agents with knowledge of the Contract to respond to questions from NEFCO.

2 Prohibited Practices

NEFCO requires that the Borrower (including the beneficiaries of NEFCO loans), as well as tenderers, suppliers, sub-suppliers, contractors, subcontractors, concessionaires, consultants and subconsultants under NEFCO-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, NEFCO:

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

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence improperly the actions of a party;
 - (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - (v) “Obstructive Practice” means (a) deliberately destroying, falsifying, altering or concealing of evidence material to an investigation related to the Contract; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to such investigation or from pursuing the investigation, or (b) acts intended to materially impede the exercise of NEFCO’s contractual rights of audit or access to information or the rights that any relevant authority has in accordance with any law, regulation or treaty;
 - (vi) “Money Laundering” means (i) the conversion or transfer of property, knowing that such property is derived from criminal activity or participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such activity to evade the legal consequences of his action; (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from participation in such activity; (iii) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from participation in such activity; (iv) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling any of the actions mentioned in the foregoing points;
 - (vii) “Financing of terrorism” means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of the Council of the European Union Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism; and
 - (viii) “theft” means the misappropriation of property belonging to another party.
- (b) will cancel the portion of NEFCO financing allocated to a contract for Plant or Related Works if it at any time determines that Prohibited Practices were engaged in by representatives of the Borrower or of a beneficiary of NEFCO financing during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to NEFCO to remedy the situation;
 - (c) may declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a NEFCO-financed contract if it at any time determines that the firm has engaged in Prohibited Practices in competing for, or in executing, a NEFCO-financed contract; and
 - (d) reserves the right, where a Borrower or a firm has been found by a judicial process in any country or a finding by the enforcement (or similar) mechanism of another international organisation, including Mutual Enforcement Institutions, to have engaged in Prohibited Practices
 - (i) to cancel all or part of the NEFCO financing for such Borrower; and
 - (ii) to declare that such a firm is ineligible, either indefinitely or for a stated period of time, to be awarded a NEFCO-financed contract.

3 Eligibility

- 3.1 The Contractor and its Subcontractors shall have the nationality of an Eligible Country. A Contractor or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 3.2 All Plant and Related Works to be supplied under the Contract and financed by NEFCO shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the Goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

4 Notices

- 4.1 Any notice given by one Party to the other, pursuant to the Contract shall be in writing to the address specified in the PCC. The term “in writing” means communicated in written form with proof of receipt.

5 Settlement of Disputes

- 5.1 The Employer and the Contractor shall make every effort to resolve amicably by direct informal negotiation any dispute arising between them under or in connection with the Contract.
- 5.2 If, after twenty-eight (28) days from the commencement of such consultation, the Parties have failed to resolve their dispute by such mutual consultation, then either Party may give notice to the other Party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the PCC.
- 5.3. Notwithstanding any reference to arbitration herein,
- (a) the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - (b) the Employer shall pay the Contractor any monies due the Contractor.

6 Scope of Supply

- 6.1 The Plant and Related Works to be supplied shall be as specified in Section IV, Employer’s Requirements.

7 Delivery

- 7.1 Delivery of the Plant and Completion of the Related Works shall be in accordance with the Delivery and Completion Schedule specified in Section IV, Employer’s Requirements. The shipping and other documents to be furnished by the Contractor are specified in the PCC. The documents specified therein shall be received by the Employer before arrival of the Plant and, if not received, the Contractor shall be responsible for any consequent expenses.

8 Contractor’s Responsibilities

- 8.1 The Contractor shall supply all the Plant and Related Works included in the Scope of Supply in accordance with GCC 6, and the Delivery and Completion Schedule, as per GCC 7.

9 Contract Price

- 9.1 Unless otherwise prescribed in the PCC, the Contract Price shall be fixed throughout the duration of Contract performance.

10 Terms of Payment

10.1 The Contract Price shall be paid as specified in the PCC.

11 Taxes and Duties

11.1 For Plant manufactured outside the Employer's Country the Contractor shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Employer's Country.

11.2 For Plant manufactured within the Employer's Country the Contractor shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Plant to the Employer.

11.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the Employer's Country, the Employer shall use its best efforts to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

12 Performance Security

12.1 If so required in the PCC, the Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract of the amount specified in the PCC.

13 Subcontracting

13.1 The Contractor shall notify the Employer in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later, shall not relieve the Contractor from any of its obligations, duties, responsibilities, or liability under the Contract.

13.2 Subcontracts shall comply with the provisions of GCC 2 and GCC 3.

14 Specifications and Standards

14.1 The Contractor shall ensure that the Plant and Related Works comply with technical requirements, as specified in Section IV, Employer's Requirements.

15 Packing and Documents

15.1 The Contractor shall provide such packing of the Plant as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Plant's final destination and the absence of heavy handling facilities at all points in transit.

15.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the PCC, and in any other instructions ordered by the Employer.

16 Insurance

16.1 Unless otherwise specified in the PCC, the Plant supplied under the Contract shall be fully insured, in a freely convertible currency from an Eligible Country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the PCC.

17 Transportation

17.1 Unless otherwise specified in the PCC, responsibility for arranging transportation of the Plant shall be in accordance with the specified Incoterms.

18 Inspections and Tests

- 18.1 The Contractor shall at its own expense and at no cost to the Employer carry out all such tests and/or inspections of the Plant and Related Works as specified in the PCC.

19 Liquidated Damages

- 19.1 If the Contractor fails to deliver any or all of the Plant, by the date(s) of delivery, or perform the Related Works within the period specified in the Contract, the Employer may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the PCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the PCC. Once the maximum is reached, the Employer may terminate the Contract pursuant to GCC 24.

20 Warranty

- 20.1 The Contractor warrants that all parts of the Plant are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 20.2 The Contractor further warrants that the Plant shall be free from defects arising from any act or omission of the Contractor or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 20.3 Unless otherwise specified in the PCC, the warranty shall remain valid for twelve (12) months after the Plant, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the PCC, or for eighteen (18) months after the date of shipment, from the port, or place of loading in the country of origin, whichever period concludes earlier.
- 20.4 The Employer shall give notice to the Contractor stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect such defects.
- 20.5 Upon receipt of such notice, the Contractor shall, within the period specified in the PCC, expeditiously repair or replace the defective Plant or parts thereof, at no cost to the Employer.

If having been notified, the Contractor fails to remedy the defect within the period specified in the PCC, the Employer may proceed to take within a reasonable period such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which the Employer may have against the Contractor under the Contract.

21 Limitation of Liability

- 21.1** Except in cases of gross negligence or willful misconduct:
- (a) the Contractor shall not be liable to the Employer, whether in contract, in tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer; and
 - (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort, or otherwise, shall not exceed the Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

22 Force Majeure

- 22.1 The Contractor shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 22.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but are not limited to, acts of the Employer in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 22.3 If a Force Majeure situation arises, the affected Party shall promptly notify the other Party in writing of such condition and the cause thereof. Unless otherwise directed by the other Party in writing, the affected Party shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

23 Change Orders and Contract Amendments

- 23.1 The Employer may at any time order the Contractor through notice in accordance with GCC 4, to make changes within the general scope of the Contract.
- 23.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Contractor’s performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended.
- 23.3 Subject to the above, no variation in, or modification of, the terms of the Contract shall be made except by written agreement signed by the Parties.

24 Termination**24.1 Termination for Default**

The Employer, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor, may terminate the Contract in whole or in part:

- (i) if the Contractor fails to deliver any or all of the Plant and Related Works within the period specified in the Contract;
- (ii) if the Contractor, in the judgment of the Employer, has engaged in Prohibited Practices, as defined in GCC 2, in competing for, or in executing the Contract.

24.2 Termination for Insolvency

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

Section VI. Particular Conditions of Contract

The following Particular Conditions of Contract shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Boxed guidance notes and provisions in italics font contain instructions and guidance which the drafter should follow. They are not part of the text and should not be included in the final document.

All reference Clauses and Sub-clauses provided in the Particular Conditions of Contract shall be construed as reference Clauses and Sub-clauses in Section V, General Conditions of Contract.

GCC refer-
ence

Particular Conditions of Contract

General Provisions

- 1.1.2.2 The Employer is: *[Insert the name of Employer]*
- 1.1.2.6 The Borrower/Grant Beneficiary is: *[insert name of the borrower/grant beneficiary/grantee]*
- 1.1.5.1 The Employer's Country is: *[insert the name of the Employer's Country]*
- 1.1.5.4 The Project Site is: *[insert description, if applicable]*
- 1.1.5.5 The version of Incoterms shall be the current edition of Incoterms, published by the International Chamber of Commerce, Paris.
- 1.3 The governing law is that of: *[insert name of the country]*.
The language for communications is *[name of language for communications only if different from the ruling language]*:
The ruling language is: *[this shall be the language specified in the Instructions to Tenderers]*

4 Notices

- 4.1 For **notices**, the Employer's address shall be:

Attention: _____

Street Address: _____

Floor / Room number: _____

City: _____

Postal Code: _____

Country: _____

Telephone: _____

Facsimile number: _____

Email address: _____

5.2 The rules of procedure for arbitration shall be as follows:

EXAMPLE:

- (a) In the case of a dispute between the Employer and a Contractor which is a national of the Employer's Country, the dispute shall be referred to adjudication/arbitration in accordance with the laws of the Employer's Country.
- (b) In the case of a dispute between the Employer and a foreign Contractor, the dispute shall be settled by arbitration in accordance with the provisions of the UN-CITRAL Arbitration Rules.
- (c) The place of arbitration shall be *[insert place]*.
- (d) The arbitration proceedings shall be conducted in the language governing the Contract.

Notwithstanding any referral of a dispute to arbitration herein:

- (a) the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) the Employer shall pay the Contractor any monies due the Contractor.

7.1 **EXAMPLE:**

The shipping and other documents to be furnished by the Contractor are:

- (i) original and (_____) copies of the Contractor's invoice showing the Plant's description, quantity, unit price and total amount;
- (ii) original and (_____) copies of the transport document;
- (iii) original and (_____) copies of packing list identifying contents of each package;
- (iv) Manufacturer's/Contractor's warranty certificate;
- (v) inspection certificate, issued by the nominated inspection agency and the Contractor's factory inspection report.

10 Terms of payment

10.1 The terms of payment shall be as follows:

The following example is appropriate for contracts where the value of Plant exceeds that of Related Works and contract duration is equal to or less than six (6) months.

EXAMPLE:

The method and conditions of payment to be made to the Contractor under this Contract shall be as follows:

- (a) Payment for Plant shall be made in _____ *[insert currency specified in the Contractor's tender]* in the following manner:
 - (i) Advance payment: Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing the Contract, and upon submission of a claim and a bank guarantee in a form acceptable to the Employer, for an equivalent amount valid until the Plant is delivered;
 - (ii) On shipment: Eighty (80) percent of the Contract Price of the Plant shipped shall be paid within thirty (30) days of delivery of Plant at destination against the Minutes of Arrival signed by both parties, and upon submission of documents specified in PCC 7.1; and

- (iii) On acceptance: Ten (10) percent of the Contract Price of the Plant and ninety (90) percent of the Contract Price of the Related Works shall be paid within thirty (30) days of Plant testing and commissioning, upon submission of a claim supported by the acceptance certificate issued by the Employer for the Plant.

The following example is appropriate for contracts where the value of Plant is comparable to or less than that of Related Works and/or contract duration is over 6 months.

EXAMPLE:

The method and conditions of payment to be made to the Contractor under this Contract shall be as follows:

- (a) Payment for Plant shall be made in _____ *[insert currency specified in the Contractor's tender]* in the following manner:
- (i) Advance payment: Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing the Contract, and upon submission of a claim and an advance payment security in a form acceptable to the Employer, for an equivalent amount valid until the Plant is delivered;
 - (ii) On shipment: Eighty (80) percent of the Contract Price of the Plant shipped shall be paid within thirty (30) days of delivery of Plant at destination against the Minutes of Arrival signed by both parties, and, upon submission of documents specified in PCC 7.1; and
 - (iii) On acceptance: Ten (10) percent of the Contract Price of the Plant shall be paid within thirty (30) days of Plant testing and commissioning, upon submission of a claim supported by the acceptance certificate for the Plant issued by the Employer.
- (b) Payment for Related Works shall be made in _____ *[insert currency specified in the Contractor's tender]* in the following manner:
- Eighty (80) percent of the measured value of work performed by the Contractor during the preceding month/quarter *[choose periodicity, as appropriate]*, as evidenced by Employer's authorisation of the Contractor's application, shall be paid monthly/quarterly *[choose periodicity, as appropriate]* within thirty (30) days of the receipt of respective invoice; and
 - Ten (10) percent of the Contract Price of the Related Works shall be paid within thirty (30) days of Plant testing and commissioning, upon submission of a claim supported by the acceptance certificate issued by the Employer for the Plant.

12 Performance Security

- 12.1** A Performance Security *[insert "shall" or "shall not"]* be required.

If a Performance Security is required, the amount of Performance Security as a percentage of the Contract Price shall be: *[specify percentage: five (5) to ten (10) percent of the Contract Price is reasonable; it should not normally exceed ten (10) percent]*.

- 12.3** If a Performance Security is required, the currency shall be: *[specify the currency. Normally, the currency in which the Contract Price is payable]*.

If required, the Performance Security shall be in the form of an unconditional bank guarantee.

- 12.4** Discharge of Performance Security shall take place:

EXAMPLE:

After delivery and acceptance of the Plant and Related Works, the performance security shall be reduced to two (2) percent of the Contract Price to cover the Contractor's warranty obligations in accordance with GCC 20.3.

15 Packing and Documents

15.2 The packing, marking and documentation within and outside the packages shall be: *[insert details required for packing marking and documentation]*.

16 Insurance

16.1 The insurance coverage shall be in an amount equal to 110 percent of the DDP (Incoterms) value of the Plant from "warehouse to warehouse" on an "All Risks" basis, including War Risks and Strikes.

18 Inspection and tests

18.1 The inspections and tests shall be:

Preshipment inspection: *[specify inspection and tests]*

Final acceptance: *[specify inspection and tests]*

18.2 The inspections and tests shall be conducted at: _____

19 Liquidated Damages

19.1 The liquidated damage shall be: _____ % per week.

The maximum percentage of liquidated damages shall be: _____%

<p><i>Applicable rate would normally be set at one half (0.5) of a percent per week and the maximum deduction should not exceed ten (10) percent of the Contract Price.</i></p>

20 Warranty

20.3 The period of validity of the warranty shall be *[insert number of months]* months from the date of the acceptance certificate signed by Employer.

EXAMPLE:

The Contractor shall promptly correct, at no cost to the Employer, any defect in any Plant or parts repaired or replaced pursuant to GCC 20.3, 20.4 and 20.5 above, upon receipt of a written notice of defect within 12 months of the acceptance of the repaired or replaced Plant or parts.

20.5 The period for repair or replacement shall be: *[insert number of days]* days.

Section VII. Contract Forms

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

1. LETTER OF ACCEPTANCE

[on the letterhead of the Employer]

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

..... *[date]*

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

This is to notify you that your Tender dated *[insert date]* for the execution of the
[insert name of the contract and identification number] for the amount of *[in-*
sert amount(s) in figures and words and name(s) of currency], as corrected and modified in accord-
ance with the Instructions to Tenderers, is hereby accepted by us.

You are requested to furnish the Performance Security in the amount of *[insert amount(s) in figures and words and name(s) of currency]* within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section VII, Annex to the PCC - Contract Forms.

Authorised Signature:

Name of Signatory:

Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

2. Contract Agreement

THIS CONTRACT AGREEMENT is made on the *[insert number]* day of *[insert month]* *[insert year]*.

BETWEEN

(1) *[insert complete name of the Employer]*, a *[insert description of type of legal entity, for example, an agency of the Ministry of {insert name of Ministry/agency} of the Government of {insert name of Country of the Employer }, or corporation incorporated under the laws of {insert name of Country of the Employer }]* and having its principal place of business at *[insert address of the Employer]* (hereinafter called “the Employer ”),

and

(2) *[insert name of the Contractor]*, a corporation incorporated under the laws of *[insert country of Contractor]* and having its principal place of business at *[insert address of Contractor]* (hereinafter called “the Contractor ”).

WHEREAS the Employer invited tenders for Plant and Related Works, described as *[insert brief description of the Plant and Related Works]* and has accepted a Tender by the Contractor for the supply of these Plant and Related Works, and the Employer agrees to pay the Contractor the Contract Price of *[insert the accepted Contract Price in words and numbers]* or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

The Employer and the Contractor agree as follows:

1. In this Contract 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 Contract Agreement. This Contract Agreement shall prevail over all other Contract documents, which shall apply in the following order;
 - (a) the Letter of Acceptance,
 - (b) the Letter of Tender,
 - (c) the Amendments to Tender documents No.s *[insert numbers of amendments if any]*.,
 - (d) the Particular Conditions,
 - (e) the General Conditions,
 - (f) the Specification,
 - (g) the Drawings, and
 - (h) the completed Schedules.
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to supply the Plant and Related 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 supply of the Plant and Related Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

The Contract Agreement to be executed in accordance with the laws of *[governing law in accordance with the PCC]* on the day, month and year indicated above.

Signed for and on behalf of the Employer:

.....

Name:

Date:

In the presence of Witness:

.....

Name:

Address:

Date:

Signed for and on behalf the Contractor:

.....

Name:

Date:

In the presence of Witness:

.....

Name:

Address:

Date:

3. PERFORMANCE SECURITY

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated.]

Date: [insert date (as day, month, and year)]

Tendering Process Reference: [insert no. and title of Tendering process]

Bank's Branch or Office: [insert complete name of Guarantor]

Beneficiary: [insert complete name of Employer]

PERFORMANCE GUARANTEE No.: [insert Performance Guarantee number]

We have been informed that [insert complete name of the Contractor] (hereinafter called "the Contractor") has entered into Contract No. [insert number] dated [insert day and month] [insert year] with you, for the supply of [description of Plant and Related Works] and the remedying of any defects therein (hereinafter called "the Contract").

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

At the request of the Contractor, we hereby irrevocably undertake to pay you any sum(s) not exceeding [insert amount(s) in figures and words¹] such sum being payable in the types and proportions of currency in which the Contract Price is payable, upon receipt by us of your first demand in writing declaring the Contractor to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the [insert number] day of [insert month] [insert year],² and any demand for payment under it must be received by us at this office on or before that date. This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

.....[Signatures of authorised representatives of the bank]

¹ The Bank shall insert the amount(s) specified in the PCC and denominated, as specified in the PCC, either in the currency of the Contract or a freely convertible currency acceptable to the Employer.

² Dates established in accordance with GCC 7.1, taking into account any warranty obligations of the Contractor under PCC 12.4 intended to be secured by a partial Performance Guarantee. The Employer should note that in the event of an extension of the time to perform the Contract, the Employer would need to request an extension of this Guarantee from the Bank. 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: "We agree to a one-time extension of this Guarantee for a period not to exceed [six months] [one year], in response to the Employer's written request for such extension, such request to be presented to us before the expiry of the Guarantee."

4. ADVANCE PAYMENT SECURITY

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated]

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

Tendering Process Reference: [insert number and title of Tendering process]

[bank's letterhead]

Beneficiary: [insert legal name and address of Employer]

ADVANCE PAYMENT GUARANTEE No.: [insert Advance Payment Guarantee no.]

We have been informed that [name of the Contractor]. (hereinafter called "the Contractor") has entered into Contract No. [reference number of the Contract]. dated with you, for the supply of Plant and Related Works [name of contract and brief description of Plant and Related Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum [name of the currency and amount in figures] ¹. (. [amount in words].) is to be made against an advance payment guarantee.

At the request of the Contractor, we [name of the Bank]. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [name of the currency and amount in figures]*. (. [amount in words].) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than performing his obligations under the Contract.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number [Contractor's account number in the Bank providing the Advance Payment Guarantee]. at [name and address of the Bank providing the Advance Payment Guarantee].

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

..... *[Seal of Bank and Signature(s)].*

Note –

All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

1 The Guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.