

Recommended Tender Documents

Templates and User Guide

Procurement of Works

(Version #2.2)

Helsinki - July 2019

PREFACE

These Recommended Tender Documents, Templates and User Guide have been prepared by the Nordic Environment Finance Corporation (NEFCO) for the procurement of 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 prepared by using as the basis the Master Document for Procurement of Small Works that was jointly prepared by Multilateral Development Banks (MDBs) and International Financial Institutions (IFIs), as well as the EBRD's Standard Tender Document for Procurement of Simple Works¹. 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 procurement action or contract should be defined in the Particular Conditions of Contract (PCC).

Guidance Notes on using these Recommended Tender 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 Parts and 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 Works, the Delivery and Completion Schedule, the Technical Specifications and the Drawings that describe the 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 the 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 have 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

...[Works to be procured]

This Invitation for Tenders follows the General Procurement Notice for this project which was published on the Procurement Notices section of NEFCO website (www.nefco.org) [and in [specify where else]].

[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 Works as applicable. State size and principal quantities, 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].

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.

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

[<i>Contact name</i>]
[<i>Employer's entity</i>]
[<i>Address</i>]
[<i>Tel:</i>]
[<i>Email:</i>]

Date: _____

**Tender Document for
Procurement of
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 works to be performed, including the name of Lots, if any]*, as specified in Section V, 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 Recipient (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 sub-consultants 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 con-

sequences 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 Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Framework Decision 2005/671/JHA; and

(viii) “Theft” means the misappropriation of property belonging to another party.

- (b) will reject a proposal for award if it determines that the tenderer, supplier, subsupplier, 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 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 Works for NEFCO-financed contracts.

Consistent with international law, the proceeds of the NEFCO's financing shall not be used for payment to persons or entities or for any import of Materials, if such payment or import is prohibited by EU sanctions or 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 Materials and 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 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, 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 from that country or any payments to persons or entities in that country.

5. Eligible Works and Materials

- 5.1 All Works and Materials to be supplied under the Contract and financed by NEFCO, shall originate from an eligible country pursuant to ITT 4.2.
- 5.2 For purposes of this paragraph, the term Materials includes commodities and raw materials; and Works includes works such as transportation, construction, installation, commissioning and training.

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.

Delete ITT 6.4 – 6.7 if no pre-tender meeting is planned

- 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 Materials and 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 Materials and 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 permitted*] 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.

The Tenderer shall quote prices as required in each Price Schedule included in Section III, Tender Forms. Notwithstanding any other provision in this tender documentation the Materials to be supplied from abroad shall be delivered DDP at Site (Incoterms), and the Materials to be

supplied from within the country shall be delivered at Site. The Tenderer shall quote the price of the Materials the following way:

- a) for Materials delivered from abroad tender price shall be DDP at Site;
- b) for Materials 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 Works can include the preparation of drawings, construction, installation, commissioning of the Works to the Employer, and other works required by the Technical Specifications and Price Schedules.

10.2 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 the Tenderer shall provide the information requested in Section III, Tender Forms.
13. **Documents Establishing the Eligibility of Works**
 - 13.1 To establish the eligibility of the Works, Tenderers shall complete the forms, included in Section III, Tender Forms.
 - 13.2 The Tenderer must provide documentary evidence to establish the conformity of the Works and Materials:

The documentary evidence of the Works' and Materials' 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 Materials;
 - (b) a paragraph-by-paragraph commentary on the Employer's Requirements demonstrating substantial responsiveness of the Works and Materials 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 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 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 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 specified in ITT 17.1(b) above 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

ria 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 Purchaser 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 is 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 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 from the Employer 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

and currency 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 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 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 an arithmetic 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 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, 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:

- for Lot 1: EUR *[insert value1]* ** equivalent;
- for Lot 2: EUR *[insert value2]* ** equivalent;
-
- for Lot N: EUR *[insert valueN]* ** equivalent.

In case of a tenderer bidding for more than one Lot, average annual turnover over the last *[insert number]** years shall exceed the total value set for the respective Lots above.

**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:

- for Lot 1: EUR *[insert value1]* * equivalent;
- for Lot 2: EUR *[insert value2]* * equivalent;
-
- for Lot N: EUR *[insert valueN]* * equivalent,

taking into account the Tenderer's commitments for other contracts.

In case of a tenderer bidding for more than one Lot, the available financial resources shall be not less than the total value set for the respective Lots above.

**The Employer should calculate an estimated amount cash flow requirements based on a number of months, which shall be determined taking into account the total time needed by the Employer to pay a contractor's invoice, allowing for (a) the time of construction, from the beginning of the month invoiced; (b) the time needed to issue the monthly certificate; (c) the time needed by the Employer to pay the certified amount, and (d) a contingency period of one to two months to allow for unforeseen delays. (One month contingency is adequate when the total of (a) + (b) + (c) is three months or less). The assessment should be based on a straight-line projection of the estimated cash flow requirement, neglecting the effect of any advance payments and retention monies.*

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:

- for Lot 1: *[insert the amount1 and currency]***;*
- for Lot 2: *[insert the amount2 and currency]***;*
-
- for Lot N: *[insert the amountN and currency]***,*

that have been successfully and substantially completed and that are similar to the proposed Works.

In case of a tenderer bidding for more than one Lot, the value of each contracts shall be not less than the total value set for the respective Lots above.

** Usually at least three (3) contracts for the execution of Works 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.*

d) Specific requirements for JVCA

In case of a tender submitted by JVCA, the leading partner should demonstrate at least 60% compliance with the requirements (b) and (c) above.

e) Personnel

The Tenderer must demonstrate that it has the personnel for the key positions that meet the following requirements:

No.	Position	Total similar experience, years	In similar works experience, years

The Tenderer shall provide details of the proposed personnel and their experience records in the relevant Information Forms included in Section III, Tender Forms.

f) **Equipment**

The Tenderer must demonstrate that it has the key equipment listed hereafter:

No.	Equipment type and characteristics	Minimum required number

The Tenderer shall provide further details of proposed items of equipment using the relevant Form in Section III., Tender Forms.

Section III. Tender Forms

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Letter of Tender

Note for Tenderers: *The Tenderer must prepare the Letter of Tender 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 execute, in conformity with the Tender Document, the following Works:.....
- (c) The total price of our Tender (without VAT), excluding any discounts offered in item (e) below is:
(currency and amount in words and in numbers)
- (d) Amount of VAT is
(currency and amount 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 subsuppliers for any part of the Contract, are eligible in accordance with ITT 4.2;
- (i) We, including any subcontractors or suppliers and subsuppliers 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 subsuppliers for any part of the contract—have not been declared ineligible and are not under investigation 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, or is under investigation, 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 any 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 subcontractors 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 Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Framework Decision 2005/671/JHA;

• **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]

Schedules of Prices / Bill of Quantities

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

Objectives

The objectives of the Bill of Quantities are:

- (a) to provide sufficient information on the quantities of works to be performed to enable tenders to be prepared efficiently and accurately; and*
- (b) when a contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of works executed.*

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

Pricing

The pricing of the Bill of Quantities must be consistent with the pricing and currency provisions in the rest of the document (e.g. Instructions to Tenderers, Tender Data, and Conditions of Contract).

Quantities

Quantities should be computed net from the drawings, unless directed otherwise in the contract, and no allowance should be made for bulking, shrinkage, or waste. Quantities should be rounded up or down where appropriate and spurious accuracy should be avoided.

Daywork Schedule

A Daywork Schedule should be included if the probability of unforeseen work, outside the items included in the Bill of Quantities, is relatively high.

Provisional Quantities and Sums

Provision for quantity contingencies in any particular item or class of work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bill of Quantities for the item or class of work in question, and not by increasing the quantities for that item or class of work beyond those of the work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) can be made by including a "Provisional Sum" in the Summary of the Bill of Quantities. The use of these Provisional Sums should be monitored very closely, and where the total value of such Provisional Sums exceeds fifteen (15) per cent of the estimated base Contract Price, an audit of these Sums should be carried out when an amount representing fifteen (15) per cent of the base Contract has been expended under Provisional Sums.

EXAMPLE:**PREAMBLE****General**

1. Price Schedules (Bill of Quantities) 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 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 Grand Summary shall be deemed to be the total price for executing the 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.

EXAMPLE:**Price Schedule #1: 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: DDP or at site (EUR or LC*)	Total price: 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: 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: (EUR or LC*)	Total price: (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: (EUR or LC*)
1	Price Schedule #1: Materials to be Supplied	
2	Price Schedule #2: Works to be Executed	
3	Provisional sum	
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 _____, _____.

EXAMPLE:**DAYWORK SCHEDULE**

Date: _____

Tender: _____

Name of the Tenderer: _____

The Daywork Schedule shall be used for probable unforeseen works outside the items included in the Activity Schedule. Prior written instructions of the Project Manager are required for additional work. The Tenderer shall enter here various classes of labour, materials and construction equipment with their basic daywork rates or prices.

The Tenderer shall specify the currency (EUR or Local Currency) in column 4.

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
No.	Item	Unit	Unit price: (EUR or LC*)
1	Construction worker	1 man day	
2	Electrical technician	1 man day	
3	Crane	1 hour	
4	Excavator	1 hour	
5	Truck	1 hour	
6	<i>Other (to be entered by Tenderer)</i>		

*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.

We understand this Tender-Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tender; or (ii) twenty-eight (28) days after the expiration of our Tender.

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 Joint Venture, the Tender-Securing Declaration must be in the name of all members to the Joint Venture that submits the tender.]

Site Organisation and Method Statement

The Tenderer shall provide general description of the arrangements and method statement which the Tenderer intends to adopt for the execution of the Works. The Tenderer's arrangements and method statement should demonstrate their adequacy for satisfactory execution of the Works in conformity with the Tender Documents.

Mobilisation and Construction Schedules

The Tenderer shall provide information and/or a schedule showing the order in which the Tenderer intends to carry out the Works including the anticipated timing of each stage of the performance of the Contract including but not limited to:

- a) mobilisation of the Contractor's Equipment;
- b) execution of each key construction activity including anticipated construction rates and estimated timing for commencement and completion;
- c) details relating to the sources of the key materials, estimated transportation distances for the materials;
- d) other information as the Tenderer deems relevant or appropriate.

Contractor's Equipment

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

Type of Equipment*		
Equipment Information	Name of manufacturer	Model and power rating
	Capacity*	Year of manufacture*
Current Status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

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

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

Contractor's Personnel

Proposed Personnel

Tenderers should provide the names of suitably qualified personnel to meet the specified requirements for each of the positions listed in Section II (Evaluation and Qualification Criteria). The data on their experience should be supplied using the Form below for each candidate.

1.	Title of position
	Name
2.	Title of position
	Name
3.	Title of position
	Name
4.	Title of position
	Name
5.	Title of position
	Name
6.	Title of position
	Name
etc.	Title of position
	Name

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: <ul style="list-style-type: none">• Articles of Incorporation or Registration of firm named in 1 above.• 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:
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: <ul style="list-style-type: none">• Articles of Constitution, Incorporation or Registration of firm named in 1 above.• 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.

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 III, 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, fax & 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.				

History of Non-Performing Contracts

Tenderer's Legal Name: _____

Date: _____

JVCA Partner's Legal Name: _____

Tender No.: _____

Page _____ of _____ pages

Non-Performing Contracts in accordance with Section III, Evaluation Criteria			
<input type="checkbox"/> Contract non-performance did not occur during the stipulated period, in accordance with Sub-Clause 26.1(b) of Section III, Evaluation Criteria			
Year	Non-performed portion of contract	Contract identification	Total Contract amount (current value, Euro equivalent)
Pending Litigation, in accordance with Section III, Evaluation Criteria			
<input type="checkbox"/> No pending litigation <input type="checkbox"/> Pending litigation, as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, Euro equivalent)
		Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	
		Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	

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/fax number:		
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 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. Scope of Works

The scope of Works and Materials 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 Materials</u>			
List No.	Name of <u>Materials</u>	<u>Brief Description</u>	<u>Quantity</u>

EXAMPLE:

<u>1.2 Scope of Works</u>			
List No.	Name of <u>Works</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 completion date is no later than: _____.

Name of <u>Works</u>	Delivery Schedule (<u>dd/mm/yyyy</u>)

3. Technical Specifications

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 at least equivalent”.

Text of Technical Specifications to be inserted in the Tender documents by the Employer, as applicable.

Item No.	Full Technical Specification of Materials required	

EXAMPLE:

Equivalence of Standards and Codes

Wherever reference is made in the Technical Specifications to specific standards and codes to be met by the 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.

A simplified map showing the location of the Site in relation to the local geography, including major roads, ports, airports, and railroads, is helpful. The construction drawings, even if not fully developed, must show sufficient details to enable tenderers to understand the type and complexity of the work involved, and to price the Bill of Quantities. 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 of Contract (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.

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

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

A. General

1. Definitions

1.1 Boldface type is used to identify defined terms.

- (a) The **Accepted Contract Amount** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- (b) The **Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- (c) The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
- (d) **NEFCO** means the financing institution **named in the PCC**.
- (e) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Tender.
- (f) **Compensation Events** are those defined in GCC Clause 42 hereunder.
- (g) The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 51.1.
- (h) The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- (i) The **Contractor** is the party whose Tender to carry out the Works has been accepted by the Employer.
- (j) The **Contractor's Tender** is the completed tender document submitted by the Contractor to the Employer.
- (k) The **Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- (l) **Days** are calendar days; months are calendar months.
- (m) **Dayworks** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials.
- (n) A **Defect** is any part of the Works not completed in accordance with the Contract.
- (o) The **Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.

- (p) The **Defects Liability Period** is the period **named in the PCC** pursuant to Sub-Clause 34.1 and calculated from the Completion Date.
- (q) **Drawings** means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (r) The **Employer** is the party who employs the Contractor to carry out the Works, **as specified in the PCC**.
- (s) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (t) "**In writing**" or "**written**" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (u) The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.
- (v) The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the PCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (w) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (x) **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (y) The **Project Manager** is the person **named in the PCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- (z) **PCC** means Particular Conditions of Contract.
- (aa) The **Site** is the area **defined as such in the PCC**.
- (bb) **Site Investigation Reports** are those that were included in the tender documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (cc) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (dd) The **Start Date** is **given in the PCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (ee) A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (ff) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (gg) A **Variation** is an instruction given by the Project Manager which varies the Works.
- (hh) The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, **as defined in the PCC**.

- 2. Interpretation** 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also

- include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is **specified in the PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
- (a) Agreement,
 - (b) Letter of Acceptance,
 - (c) Contractor's Tender,
 - (d) Particular Conditions of Contract,
 - (e) General Conditions of Contract,
 - (f) Specifications,
 - (g) Drawings,
 - (h) Bill of Quantities, and
 - (i) any other document **listed in the PCC** as forming part of the Contract.
- 3. Language and Law and Import Prohibitions**
- 3.1 The language of the Contract and the law governing the Contract are **stated in the PCC**.
- 3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Employer's country, when
- (a) as a matter of law or official regulations, the Employer's country prohibits commercial relations with that country; or
 - (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Employer's Country prohibits any import of goods from that country or any payments to any person, or entity in that country.
- 4. Project Manager's Decisions**
- 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
- 5. Delegation**
- 5.1 Unless otherwise **specified in the PCC**, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.
- 6. Communications**
- 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 7. Subcontracting**
- 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 8. Other Contractors**
- 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as **referred to in the PCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

- 9. Personnel and Equipment**
- 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Tender, to carry out the Works, or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Tender.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
- 9.3 If the Employer, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in any Prohibited Practice during the execution of the Works, then that employee shall be removed in accordance with Clause 9.2 above.
- 10. Employer's and Contractor's Risks**
- 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
- 11. Employer's Risks**
- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are the Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
 - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or
 - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
 - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to
- (a) a Defect which existed on the Completion Date,
 - (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
 - (c) the activities of the Contractor on the Site after the Completion Date.
- 12. Contractor's Risks**
- 12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.
- 13. Insurance**
- 13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the PCC** for the following events which are due to the Contractor's risks:
- (a) loss of or damage to the Works, Plant, and Materials;
 - (b) loss of or damage to Equipment;
 - (c) loss of or damage to property (except the Works, Plant, Materials, and

Equipment) in connection with the Contract; and

(d) personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

13.5 Both parties shall comply with any conditions of the insurance policies.

14. Site Data 14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the PCC**, supplemented by any information available to the Contractor.

15. Contractor to Construct the Works 15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

16. The Works to Be Completed by the Intended Completion Date 16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

17. Approval by the Project Manager 17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.

17.2 The Contractor shall be responsible for design of Temporary Works.

17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

18. Safety 18.1 The Contractor shall be responsible for the safety of all activities on the Site.

19. Discoveries 19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

20. Possession of the Site 20.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the PCC**, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

21. Access to the Site 21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

- 22. Instructions, Inspections and Audits**
- 22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 22.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and subconsultants to keep, accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.
- 22.3 The Contractor shall permit and shall cause its Subcontractors and subconsultants to permit, NEFCO and/or persons appointed by NEFCO to inspect the Site and/or the accounts and records relating to the performance of the Contract and the submission of the Tender, and to have such accounts and records audited by auditors appointed by NEFCO if requested by NEFCO. The Contractor's and its Subcontractors' and subconsultants' attention is drawn to Sub-Clause 25.1 which provides, inter alia, that acts intended to materially impede the exercise of NEFCO's inspection and audit rights provided for under Sub-Clause 22.2 constitute a Prohibited Practice subject to contract termination (as well as to a determination of ineligibility pursuant to NEFCO's prevailing sanctions procedures).
- 23. Appointment of the Adjudicator**
- 23.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority **designated in the PCC**, to appoint the Adjudicator within 14 days of receipt of such request.
- 23.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the PCC** at the request of either party, within 14 days of receipt of such request.
- 24. Procedure for Disputes**
- 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 24.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 24.3 The Adjudicator shall be paid by the hour at the **rate specified in the PCC**, together with reimbursable expenses of the types **specified in the PCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.
- 24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place **specified in the PCC**.
- 25. Prohibited Practices**
- 25.1 NEFCO requires compliance with its policy in regard to Prohibited Practices as set forth in Clause 56 of the GCC.
- 25.2 The Employer requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

B. Time Control

- 26. Program**
- 26.1 Within the time **stated in the PCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the

general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.

- 26.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 26.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period **stated in the PCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount **stated in the PCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.
- 26.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.
- 27. Extension of the Intended Completion Date**
- 27.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 27.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
- 28. Acceleration**
- 28.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.
- 28.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.
- 29. Delays Ordered by the Project Manager**
- 29.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 30. Management Meetings**
- 30.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 30.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 31. Early Warning**
- 31.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future

event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

- 31.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

- 32. Identifying Defects** 32.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 33. Tests** 33.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 34. Correction of Defects** 34.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the PCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 34.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.
- 35. Uncorrected Defects** 35.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

D. Cost Control

- 36. Contract Price** 36.1 The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
- 37. Changes in the Contract Price** 37.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.
- 37.2 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.
- 38. Variations** 38.1 All Variations shall be included in updated Programs produced by the Contractor.
- 38.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 38.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- 38.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be

given and the Variation shall be treated as a Compensation Event.

- 38.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 38.6 If the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 28.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.
- 39. Cash Flow Forecasts** 39.1 When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
- 40. Payment Certificates** 40.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 40.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 40.3 The value of work executed shall be determined by the Project Manager.
- 40.4 The value of work executed shall comprise the value of the quantities of work in the Bill of Quantities that have been completed.
- 40.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 40.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 41. Payments** 41.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
- 41.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 41.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- 41.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.
- 42. Compensation Events** 42.1 The following shall be Compensation Events:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
 - (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
 - (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.

- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
 - (e) The Project Manager unreasonably does not approve a subcontract to be let.
 - (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
 - (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
 - (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
 - (i) The advance payment is delayed.
 - (j) The effects on the Contractor of any of the Employer's Risks.
 - (k) The Project Manager unreasonably delays issuing a Certificate of Completion.
- 42.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
- 42.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.
- 42.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.
- 43. Tax** 43.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of Tenders for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.
- 44. Currencies** 44.1 Where payments are made in currencies other than the currency of the Employer's country **specified in the PCC**, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Tender.
- 45. Retention** 45.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the PCC** until Completion of the whole of the Works.
- 45.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 51.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an "on demand" Bank Guarantee.
- 46. Liquidated Damages** 46.1 The Contractor shall pay liquidated damages to the Employer at the rate per day **stated in the PCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the PCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

- 46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 41.1.
- 47. Advance Payment**
- 47.1 The Employer shall make advance payment to the Contractor of the amounts **stated in the PCC** by the date **stated in the PCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.
- 47.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
- 47.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.
- 48. Securities**
- 48.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the PCC**, by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.
- 49. Dayworks**
- 49.1 If applicable, the Dayworks rates in the Contractor's Tender shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 49.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- 49.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.
- 50. Cost of Repairs**
- 50.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. Finishing the Contract

- 51. Completion**
- 51.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.
- 52. Taking Over**
- 52.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.
- 53. Final Account**
- 53.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the

- Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
- 54. Operating and Maintenance Manuals**
- 54.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the PCC**.
- 54.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the PCC** pursuant to GCC Sub-Clause 56.1, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount **stated in the PCC** from payments due to the Contractor.
- 55. Termination**
- 55.1 The Employer or the Contractor may terminate the Contract if the other party causes a material breach of the Contract.
- 55.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
 - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
 - (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
 - (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager’s certificate;
 - (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
 - (f) the Contractor does not maintain a Security, which is required;
 - (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the PCC**; or
 - (h) if the Contractor, in the judgment of the Employer, has engaged in Prohibited Practices, in competing for or in executing the Contract, then the Client may, after giving fourteen (14) days written notice to the Contractor, terminate the Contract and expel him from the Site.
- 55.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 55.2 above, the Project Manager shall decide whether the breach is fundamental or not.
- 55.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 55.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.
- 56. Prohibited Practices**
- 56.1 NEFCO requires that Borrowers/Grant Beneficiaries (including beneficiaries of NEFCO financing), as well as Tenderers, suppliers, subsuppliers, 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, of 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 the 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 Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Framework Decision 2005/671/JHA; and
 - (viii) “theft” means the misappropriation of property belonging to another party.
- (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 the NEFCO financing allocated to a contract for Plant Works, services or concessions if it at any time determines that Prohibited Practices were engaged in by representatives of the Borrower/Grant Beneficiary or of a beneficiary of the 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;
 - (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 the 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.

- 57. Payment upon Termination**
- 57.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **specified in the PCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 57.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.
- 58. Property**
- 58.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.
- 59. Release from Performance**
- 59.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.
- 60. Suspension of NEFCO Loan**
- 60.1 In the event that NEFCO suspends the financing to the Employer, from which part of the payments to the Contractor are being made:
- (a) The Employer is obligated to notify the Contractor of such suspension within 7 days of having received the NEFCO's suspension notice.
 - (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 40.1, the Contractor may immediately issue a 14-day termination notice.

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.

A. General	
GCC 1.1 (d)	The financing institution is: Nordic Environment Finance Corporation (NEFCO).
GCC 1.1 (r)	The Employer is <i>[insert name, address, and name of authorized representative]</i> .
GCC 1.1 (v)	The Intended Completion Date for the whole of the Works shall be <i>[insert date]</i> . <i>[If different dates are specified for completion of the Works by section (“sectional completion” or milestones), these dates should be listed here]</i>
GCC 1.1 (y)	The Project Manager is <i>[insert name, address, telephone number and email address of authorized representative]</i> .
GCC 1.1 (aa)	The Site is located at <i>[insert address of Site]</i> and is defined in drawings No. <i>[insert numbers]</i>
GCC 1.1 (dd)	The Start Date shall be <i>[insert date]</i> .
GCC 1.1 (hh)	The Works consist of <i>[insert brief summary, including relationship to other contracts under the Project]</i> .
GCC 2.2	Sectional Completions are: <i>[insert nature and dates, if appropriate]</i>
GCC 2.3(h)	<i>[Include in the case of a lumpsum contract]</i> Replace “Bill of Quantities” by “Activity Schedule”
GCC 2.3(i)	The following documents also form part of the Contract: <i>[list documents]</i>
GCC 3.1	The language of the contract is <i>[insert name of the language. The language shall be that of the Tender]</i> . The law that applies to the Contract is the law of <i>[insert name of Country]</i> .
GCC 5.1	The Project Manager <i>[may or may not]</i> delegate any of his duties and responsibilities.
GCC 8.1	Schedule of other contractors: <i>[insert Schedule of Other Contractors, if appropriate]</i>
GCC 13.1	The minimum insurance amounts and deductibles shall be: (a) for loss or damage to the Works and Materials: <i>[insert amounts]</i> . (b) For loss or damage to Equipment: <i>[insert amounts]</i> . (c) for loss or damage to property (except the Works and Materials) in connection with Contract <i>[insert amounts]</i> . (d) for personal injury or death: (i) of the Contractor’s employees: <i>[amount]</i> . (ii) of other people: <i>[amount]</i> .

GCC 14.1	Site Data are: <i>[list Site Data]</i>
GCC 18.2	<p>The Contractor shall provide the Employer with a written Health and Safety Policy and a project-specific Health and Safety Plan (the Plan) before the commencement of work. The Plan shall identify all risks specific and relevant to the project and shall provide information explaining how the identified risks will be managed by the Contractor. The Plan shall include details of the Contractor's OHS management system, including the Contractor's plans to manage and monitor the health and safety risks associated with all construction work under its control. The Plan shall be made available to NEFCO prior to the start of Construction.</p> <p>Every Contractor shall plan, manage and monitor construction work carried out by him or under his control in a way which ensures that, so far as is reasonably practicable, it is carried out without risks to health and safety. In instances where the Contractor is a joint venture, consortium or a similar entity, the Contractor shall coordinate its planning, management and monitoring activities in a manner that will ensure that any overlap does not create any potential risks to third parties.</p> <p>All work related tasks shall be risk assessed before any work is undertaken. All significant hazards shall be identified and control measures introduced to reduce foreseeable risks of injury and ill health, so far as is reasonable practicable. High regard shall be given in particular to assess and control the following specific activities and these shall be documented in the Health and Safety Plan;</p> <ul style="list-style-type: none"> • Working at Heights; • Lifting Operations; • Movement of vehicles and mobile work equipment; • Ground disturbance and excavations; and, • Working with and around live electrical conductors. <p>The Contractor shall ensure that a safe and healthy working environment is provided, and that good international occupational health and safety practice is promoted. The Contractor shall take steps to prevent accidents, injury and disease arising in the course of work by identifying and controlling risks to workers, third parties and affected communities, so as far as is reasonably practicable. The Contractor shall ensure that all staff, labourers and persons entitled to be on site receive the necessary supervision, information, instruction and training to do their jobs in a manner that does not place themselves or third parties at risk. With regard to any unauthorised site visitors, the Contractor shall familiarise itself with, and comply with, any relevant provisions of the Applicable Law. Where appropriate, the Contractor shall provide equipment to minimise health and safety risks and enforce its use.</p> <p>The Contractor shall carry out a risk assessment to ensure the correct selection of equipment is made for every task. The work equipment shall be in good working condition, designed for the specific task and not improvised in any way. The Contractor shall put in place arrangements for emergency prevention, preparedness and response.</p>
GCC 20.1	The Site Possession Date(s) shall be: <i>[insert location(s) and date(s)]</i>
GCC 23.1 & GCC 23.2	Appointing Authority for the Adjudicator: <i>[insert name of Authority]</i> .
GCC 24.3	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: <i>[insert hourly fees and reimbursable expenses]</i> .
GCC 24.4	<p><i>[For smaller contracts, the institution is usually from the Employer's country. For larger contracts, and contracts that are likely to be awarded to international contractors, it is recommended that the arbitration procedure of an international institution is agreed upon]</i></p> <p>Institution whose arbitration procedures shall be used:</p> <p><i>[For larger contracts with international contractors, it is recommended to select one</i></p>

	<p><i>institution among those listed below; insert the corresponding wording]</i></p> <p>“United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules:</p> <p>Any dispute, controversy, or claim arising out of or relating to this Contract, or breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.”</p> <p>or</p> <p>“Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC):</p> <p>All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.”</p> <p>or</p> <p>“Rules of Arbitration Institute of the Stockholm Chamber of Commerce:</p> <p>Any dispute, controversy, or claim arising out of or in connection with this Contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.”</p> <p>or</p> <p>“Rules of the London court of International Arbitration:</p> <p>Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity, or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.”</p> <p>The place of arbitration shall be: <i>[Insert city and country]</i></p>
B. Time Control	
GCC 26.1	The Contractor shall submit for approval a Program for the Works within <i>[number]</i> days from the date of the Letter of Acceptance.
GCC 26.3	<p>The period between Program updates is <i>[insert number]</i> days.</p> <p>The amount to be withheld for late submission of an updated Program is <i>[insert amount]</i>.</p>
C. Quality Control	
GCC 34.1	<p>The Defects Liability Period is: <i>[insert number]</i> days.</p> <p><i>[The Defects Liability Period is usually limited to 12 months, but could be less in very simple cases]</i></p>
D. Cost Control	
GCC 36.1	<i>[Include in the case of a lumpsum contract]</i> Replace the entire sub-clause with the following text: “The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for materials on site shall be made separately, the Contractor shall show

	delivery of Materials to the Site separately on the Activity Schedule.”
GCC 37	<i>[Include in the case of a lumpsum contract]</i> Replace the entire sub-clause 37.1 with the following text: “The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor’s own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.” and delete the sub-clause 37.2
GCC 38.1	<i>[Include in the case of a lumpsum contract]</i> After word “Programs” add “and Activity Schedules”
GCC 38.6	<i>[Include in the case of a lumpsum contract]</i> Delete the sub-clause 38.6 entirely
GCC 39.1	<i>[Include in the case of a lumpsum contract]</i> After word “Program” add “and Activity Schedule”
GCC 40.4	<i>[Include in the case of a lumpsum contract]</i> Replace the entire sub-clause 40.4 with the following text: “The value of work executed shall comprise the value of completed activities in the Activity Schedule.”
GCC 44.1	The currency of the Employer’s country is: <i>[insert name of currency of the Employer’s country]</i> .
GCC 45.1	The proportion of payments retained is: <i>[insert percentage]</i> <i>[The retention amount is usually close to 5 percent and in no case exceeds 10 percent.]</i>
GCC 46.1	The liquidated damages for the whole of the Works are <i>[insert percentage of the final Contract Price]</i> per day. The maximum amount of liquidated damages for the whole of the Works is <i>[insert percentage]</i> of the final Contract Price. <i>[Usually liquidated damages are set between 0.05 percent and 0.10 percent per day, and the total amount is not to exceed between 5 percent and 10 percent of the Contract Price. If Sectional Completion and Damages per Section have been agreed, the latter should be specified here]</i>
GCC 47.1	The Advance Payments shall be: <i>[insert amount(s)]</i> and shall be paid to the Contractor no later than <i>[insert date(s)]</i> .
GCC 48.1	The Performance Security amount is <i>[insert amount(s) denominated in the types and proportions of the currencies in which the Contract Price is payable, or in a freely convertible currency acceptable to the Employer]</i> (a) Bank Guarantee: <i>[insert percentage and amount(s)]</i> . (b) Performance Bond: <i>[insert percentage and amount(s)]</i> . <i>[A Bank Guarantee shall be unconditional (on demand) (see Section X, Contract Forms). An amount of 5 to 10 percent of the Contract Price is commonly specified for Performance Bank Guarantees. A Performance Bond is an undertaking by a bonding or insurance company (surety) to complete the construction in the event of default by the Contractor, or to pay the amount of the Bond to the Employer. An amount of 30 percent of the Contract Price is commonly used internationally for this type of security (see Section X, Contract Forms).]</i>
E. Finishing the Contract	
GCC 54.1	The date by which operating and maintenance manuals are required is <i>[insert date]</i> . The date by which “as built” drawings are required is <i>[insert date]</i> .

GCC 54.2	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is <i>[insert amount in local currency]</i> .
GCC 55.2 (g)	The maximum number of days is: <i>[insert number; consistent with Clause 46.1 on liquidated damages]</i> .
GCC 57.1	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is <i>[insert percentage]</i> .

Section VII. - Contract Forms

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

Letter of Acceptance

[on letterhead paper of the Employer]

..... *[date]*

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

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

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

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

If a Performance Security has not been requested the above provision should be deleted from the Letter of Acceptance

In accordance with ITT 31.2 of the Tender Document you are requested to sign, date and return the Agreement within 28 days of receipt.

Signed by:

Name and Title of Authorised Signatory:

Name of Agency:

Attachment: Contract Agreement

Contract Agreement

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

WHEREAS the Employer desires that the Works known as *[name of the Contract]*.should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein, 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 Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents, which shall apply in the following order:
 - (i) the Letter of Acceptance;
 - (ii) the Letter of Tender ;
 - (iii) the Amendments to Tender documents Nos _____ *[insert numbers of amendments if any]*;
 - (iv) the Particular Conditions (PCC);
 - (v) the General Conditions of Contract (GCC);
 - (vi) the Specification;
 - (vii) the Drawings;
 - (viii) Bill of Quantities;² and
 - (ix) any other document listed in the PCC as forming part of the Contract.
3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of *[governing law in accordance with the PCC]*.on the day, month and year specified above.

Signed by: _____
for and on behalf of the Employer

Signed by: _____
for and on behalf the Contractor

²In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule.”

Performance Security (Bank Guarantee)

[Guarantor letterhead or SWIFT identifier code]

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

Date: *_ [Insert date of issue]*

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

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

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

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

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert name of the currency and amount in figures]* (_____) *[insert amount and currency in words]*,¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the day of 2...², and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

¹ *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.*

² *Insert the date twenty-eight days after the expected completion date as described in GC Clause 53.1. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

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 completion of Works *[name of contract and brief description of 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 and currency 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 in the currency of the Contract.