

Review of Railway Rehabilitation in Central Asia

for Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan

Tender Documents on the rehabilitation measures for the Balykchi - Bishkek - Kazakh border railway section (Kyrgyzstan)

Lot 3.4 - Civil Works



A project implemented by Italferr S.p.A.

Kyrgyz Republic

INVITATION FOR PREQUALIFICATION

[date]

[name of the Employer]

[ADB Loan number]

Rehabilitation measures for the Balykchi – Bishkek – Kazakh Border railway section Lot 3.4 Civil Works

This Invitation for Prequalification follows the General Procurement Notice for this project that appeared in the "ADB Business Opportunities", issue of [*issue date*].

[*name of Borrower*] has received a loan from the Asian Development Bank (the Bank) towards the cost of [*specify project*] and intends to apply part of the proceeds of the Loan to payments under the contract for the [*specify the contract*].

[*name of Employer*] (the Employer) intends prequalifying firms and joint ventures to tender for the following contract(s) to be funded from part of the proceeds of the loan:

The project consists of the followings works:

- the rehabilitation of 5 bridges: (4 bridges are 2 x 6m span; 1 bridge is 1 x 6m span),
- rehabilitation of the ballast quarry near the station of Djil Aryk,
- construction of a new avalanche shed for a total length of about 500 m and slope stabilisation over the existing avalanche shed between Djil Aryk and R148 block post.

Prequalification and tendering for contracts to be financed with the proceeds of a loan from the Bank is open to firms and joint ventures of firms from eligible countries.

Interested eligible firms may obtain further information from [*insert name of Employer*] and inspect Prequalification Documents at the address given below, [*insert address at end of document*] from [*insert office hours*].

Prequalification documents in English language may be obtained from the address below upon payment of a non-refundable fee of [*state currency and value*] or equivalent in a convertible currency. [*Give instructions for payment by bank transfer or the like*].

If requested, the documents will be promptly despatched by courier, but no liability can be accepted for loss or late delivery.

The prequalification documents must be duly completed and delivered to the address below, on or before [*specify time and date of deadline for submission*].

Documents which are received late may be rejected and returned unopened.

Interested firms may obtain further information from, and inspect and acquire the prequalification documents at the following office:

[*Contact name*]

[*Executing agency*]

[*Address*]

[*Tel:*]

[*Fax:*]

Date: _____

STANDARD PROCUREMENT DOCUMENT

Prequalification of Bidders

Asian Development Bank
November 2004

Foreword

This Standard Procurement Document for the Prequalification of Bidders (SPQD) has been prepared by the Asian Development Bank (ADB) and is based on the Master Procurement Document entitled "Prequalification Documents for Procurement of Works", prepared by multilateral development banks and other public international financial institutions which reflects the majority view of these institutions. This document has the structure and the provisions of the Master Procurement Document, except where ADB-specific considerations have required a change.

This SPQD facilitates prequalification of bidders for large and complex civil works contracts, turnkey contracts, and contracts for the fabrication of expensive and technically complex plant and equipment. This is to ensure that only firms with appropriate experience, a proven track record, and necessary annual turnover, which are free of any major pending litigation, will be invited to submit bids.

This SPQD is to be used for the prequalification process for contracts financed in whole or in part by ADB and to be procured through International Competitive Bidding.

An important feature of this SPQD is that it can be used with minimum changes, as it does not contain explanations, footnotes or examples. The SPQD is only available in electronic format.

This SPQD is supported by a User's Guide. The User's Guide contains detailed explanations and recommendations to Employers on how to prepare specific Prequalification Documents and how to evaluate applications. The User's Guide is not a part of the Prequalification Document.

To obtain further information on procurement under ADB-assisted projects, contact

Project Coordination and Procurement Division
Central Operations Services Office
Asian Development Bank
P.O. Box 789, 0980 Manila, Philippines
Email: procurement@adb.org
Fax: (63-2) 636 2475

PROCUREMENT DOCUMENT

Prequalification of Bidders for the Procurement of

Issued on:

Invitation for Prequalification No.:

ICB No.:

Employer:

Country:

Preface

This Prequalification Document (PQD) has been prepared by and is based on the Standard Procurement Document for the Prequalification of Bidders (SPQD) issued by the Asian Development Bank dated

ADB's SPQD has the structure and the provisions of the Master Procurement Document entitled "Prequalification Documents for Procurement of Works", prepared by multilateral development banks and other public international financial institutions except where ADB-specific considerations have required a change.

Summary Description

Page No.

PART 1. APPLICATION PROCEDURES

Section I. Instructions to Applicants (ITA)----- 1-1

This section specifies the procedures to be followed by Applicants in the preparation and submission of their Applications for Prequalification (AFP). Information is also provided on opening and evaluation of AFPs. **Section I. contains provisions that are to be used without modification.**

Section II. Application Data Sheet (ADS) ----- 2-1

This section consists of provisions that are specific to each prequalification and supplement the information or requirements included in Section I. Instructions to Applicants.

Section III. Qualification Criteria (QLC) ----- 3-1

This section contains the criteria and methods to be used to evaluate applications.

Section IV. Application Forms (APF) ----- 4-1

This section contains the Application Submission Sheet and all the forms required to be submitted with the Application.

Section V. Eligible Countries (ELC) ----- 5-1

This section contains a list of eligible countries.

PART 2. REQUIREMENTS

Section VI. Scope of Contract (SOC) ----- 6-1

This section includes a summary description of the scope of contract and additional information on major contract components, major quantities, required construction methods, and the contract implementation period of the Contract subject of this prequalification exercise.

PART 1 – Prequalification Procedures

Section I. Instructions to Applicants

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A. General

- 1. Scope of Application**

1.1 In connection with the Invitation for Prequalification indicated in Section II, Application Data Sheet (ADS), the Employer, as defined in the ADS, issues this Prequalification Document to applicants interested in bidding for the works described in Section VI, Scope of Contract. The number of contracts and the name and identification of each contract as well as the International Competitive Bidding (ICB) number corresponding to this prequalification, are provided in the ADS.
- 2. Source of Funds**

2.1 The Borrower or Recipient (hereinafter called "Borrower") indicated in the ADS has applied for or received financing (hereinafter called "funds") from the Asian Development Bank (hereinafter called "the ADB") towards the cost of the project named in the ADS. The Borrower intends to apply a portion of the funds to eligible payments under the contract resulting from the bidding for which this prequalification is conducted (hereinafter called "the Contract").

2.2 Payments by the ADB will be made only at the request of the Borrower and upon approval by the ADB in accordance with the terms and conditions of the financing agreement between the Borrower and the ADB (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds.
- 3. Corrupt Practices**

3.1 ADB's Anticorruption Policy requires borrowers (including beneficiaries of ADB-financed activity), as well as bidders, suppliers, and contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the ADB:

 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, giving receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of any party in the procurement process or the execution of a contract;
 - (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) "collusive practices" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, designed to influence the action of any party in a procurement process or the execution of a contract;
 - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;

- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and
- (c) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed activities if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, an ADB-financed contract.

4. Eligible Applicants

- 4.1 An Applicant shall be a private or government-owned legal entity, subject to ITA Sub-Clause 4.6, or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture (JV). In the case of a JV,
 - (a) all partners to the JV shall be jointly and severally liable; and
 - (b) a JV shall nominate a representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JV during the prequalification process and, in the event the JV is prequalified, during the bidding process, and in the event the JV is awarded the Contract, during contract execution.
- 4.2 An Applicant, and all partners constituting the Applicant, shall have the nationality of an eligible country, in accordance with Section V, Eligible Countries. An Applicant shall be deemed to have the nationality of a country if the Applicant is a national of that country; or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country.
- 4.3 The above requirement shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.
- 4.4 Applicants shall not have a conflict of interest. All Applicants found to have a conflict of interest with one or more parties in this prequalification process shall be disqualified. Applicants shall be considered to have a conflict of interest, if they
 - (a) have controlling shareholders in common; or
 - (b) receive or have received any direct or indirect subsidy from any of them; or
 - (c) have the same legal representative for purposes of their Application; or
 - (d) have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or to influence the application of another Applicant in the subsequent bidding process or influence the decisions of the Employer regarding this prequalification process; or

- (e) participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of this prequalification. Where a firm, or a firm from the same economic or financial group, in addition to consulting, also has the capability to manufacture or supply goods or to construct works, that firm, or a firm from the same economic or financial group, may not normally be a supplier of goods or works, if it provided consulting services for the contract corresponding to this prequalification, unless it can be demonstrated that there is no significant degree of common ownership, influence or control.

- 4.5 A firm that is under a declaration of ineligibility by the ADB in accordance with ITA Clause 3, at the date of submission of the application or thereafter, shall not be considered.
- 4.6 Government-owned enterprises in the Employer's country shall be eligible only if they can establish that they are legally and financially autonomous, and operate under commercial law, and that they are not in any way dependent agencies of the Employer.
- 4.7 Applicants shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

**5. Eligible
Materials,
Equipment and
Services**

- 5.1 The materials, equipment and services to be supplied under the Contract and financed by ADB shall have as their country of origin an eligible country of ADB (see Section V, Eligible Countries).

B. Contents of Prequalification Document

**6. Sections of the
Prequalification
Document**

- 6.1 The Prequalification Document consists of Parts 1 and 2 which include all the sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITA Clause 8.

PART 1 Prequalification Procedures

- Section I. Instructions to Applicants (ITA)
- Section II. Application Data Sheet (ADS)
- Section III. Qualification Criteria
- Section IV. Application Forms
- Section V. Eligible Countries

PART 2 Requirements

- Section VI. Scope of Contract

- 6.2 The "Invitation for Prequalification" issued by the Employer is not part of the Prequalification Document.
- 6.3 The Employer accepts no responsibility for the completeness of the Prequalification Document and its addenda unless they were obtained directly from the Employer.

- 6.4 The Applicant is expected to examine all instructions, forms, and terms in the Prequalification Document and to furnish all information or documentation required by the Prequalification Document.
- 7. Clarification of Prequalification Document**
- 7.1 A prospective Applicant requiring any clarification of the Prequalification Document shall contact the Employer in writing at the Employer's address indicated in the ADS. The Employer will respond in writing to any request for clarification provided that such request is received no later than fourteen (14) days prior to the deadline for submission of Applications. The Employer shall forward copies of its response to all Applicants who have acquired the Prequalification Document directly from the Employer including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Prequalification Document as a result of a request for clarification, it shall do so following the procedure under ITA Clause 8 and in accordance with the provisions of Sub-Clause 17.2.
- 8. Amendment of Prequalification Document**
- 8.1 At any time prior to the deadline for submission of Applications, the Employer may amend the Prequalification Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Prequalification Document and shall be communicated in writing to all who have obtained the Prequalification Document directly from the Employer.
- 8.3 To give prospective Applicants reasonable time in which to take an addendum into account in preparing their Applications, the Employer may, at its discretion, extend the deadline for the submission of applications.

C. Preparation of Applications

- 9. Cost of Applications**
- 9.1 The Applicant shall bear all costs associated with the preparation and submission of its application, and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the prequalification process.
- 10. Language of Application**
- 10.1 The application, as well as all correspondence and documents relating to the prequalification exchanged by the Applicant and the Employer, shall be written in the English language. Supporting documents and printed literature that are part of the application may be in another language, provided they are accompanied by an accurate translation of the relevant passages into the English language, in which case, for purposes of interpretation of the application, the translation shall govern.
- 11. Documents Comprising the Application**
- 11.1 The Application shall comprise the following:
- (a) Application Submission Sheet, in accordance with ITA Clause 12;
 - (b) written confirmation authorizing the signatory of the application to commit the Applicant, in accordance with ITA Sub-Clause 15.3;

- (c) documentary evidence establishing the Applicant's eligibility to prequalify, in accordance with ITA Clause 13;
 - (d) documentary evidence establishing the Applicant's qualifications, in accordance with ITA Clause 14; and
 - (e) any other document required as specified in the ADS.
- 12. Application Submission Sheet** 12.1 The Applicant shall prepare an Application Submission Sheet using the form furnished in Section IV, Application Forms. This form must be completed without any alteration to its format.
- 13. Documents Establishing the Eligibility of the Applicant** 13.1 To establish its eligibility in accordance with ITA Clause 4, the Applicant shall complete the eligibility declarations in the Application Submission Sheet and Forms ELI 1.1 and 1.2, included in Section IV, Application Forms.
- 14. Documents Establishing the Qualifications of the Applicant** 14.1 To establish its qualifications to perform the contract in accordance with Section III, Qualification Criteria, the Applicant shall provide the information requested in the corresponding Information Sheets included in Section IV, Application Forms.
- 15. Signing of the Application and Number of Copies** 15.1 The Applicant shall prepare one original of the documents comprising the application as described in ITA Clause 11 and clearly mark it "ORIGINAL". The original of the application shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Applicant.
- 15.2 The Applicant shall submit copies of the signed original application, in the number specified in the ADS, and clearly mark them "COPY". In the event of any discrepancy between the original and the copies, the original shall prevail.
- 15.3 The requirements regarding the legal instrument evidencing the authorization to represent and sign on behalf of the Applicant shall be as specified in the ADS. Applications submitted by an existing or intended JV shall include an undertaking signed by all partners
- (a) stating that all partners shall be jointly and severally liable, and
 - (b) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JV during the prequalification process and, in the event the JV is prequalified, during the bidding process, and in the event the JV is awarded the Contract, during contract execution.

D. Submission of Applications

- 16. Sealing and Marking of Applications** 16.1 The Applicant shall enclose the original and the copies of the application in a sealed envelope which shall
- (a) bear the name and address of the Applicant;
 - (b) be addressed to the Employer, in accordance with ITA 17.1; and
 - (c) bear the specific identification of this prequalification process indicated in the ADS 1.1.

- 16.2 If the envelope is not sealed and marked as required, the Employer will assume no responsibility for the misplacement of the application.
- 17. Deadline for Submission of Applications**
- 17.1 Applications shall be received by the Employer at the address and no later than the deadline indicated in the ADS.
- 17.2 The Employer may, at its discretion, extend the deadline for the submission of Applications by amending the Prequalification Document in accordance with ITA Clause 8, in which case all rights and obligations of the Employer and the Applicants subject to the previous deadline shall thereafter be subject to the deadline as extended.
- 18. Late Applications**
- 18.1 The Employer reserves the right to accept or reject late Applications.
- 19. Opening of Applications**
- 19.1 The Employer shall prepare a record of the opening of Applications that shall include, as a minimum, the name of the Applicant. A copy of the record shall be distributed to all Applicants.

E. Evaluation of Applications

- 20. Confidentiality**
- 20.1 Information relating to the evaluation of Applications, and recommendation for prequalification, shall not be disclosed to Applicants or any other persons not officially concerned with such process until the notification of prequalification is made to all Applicants.
- 20.2 From the deadline for submission of Applications to the time of notification of the results of the prequalification in accordance with ITA Clause 28, if any Applicant wishes to contact the Employer on any matter related to the prequalification process, it may do so in writing.
- 21. Clarification of Applications**
- 21.1 To assist in the evaluation of Applications, the Employer may, at its discretion, ask any Applicant for a clarification of its application which shall be submitted within a stated reasonable period of time. Any request for clarification and all clarifications shall be in writing.
- 21.2 If an Applicant does not provide clarifications of the information requested by the date and time set in the Employer's request for clarification, its Application may be rejected.
- 22. Responsiveness of Applications**
- 22.1 The Employer may reject any Application which is not responsive to the requirements of the Prequalification Document.
- 23. Margin of Preference**
- 23.1 If so indicated in the ADS, a margin of preference shall apply in the bidding process resulting from this prequalification.

- 24. Subcontractors**
- 24.1 Applicants shall state in the Application Submission Sheet whether they intend to subcontract parts or elements of the Works.
- 24.2 If an Applicant intends to subcontract any of the key activities listed in Section III, Qualification Criteria, Criteria 4.2(b), then such key activities and the proposed subcontractors (Specialist Subcontractors) shall be clearly identified in Section IV, Application Forms, Forms ELI-1.2 and EXP-4.2(b). Such Specialist Subcontractor(s) shall meet the corresponding qualification requirements specified in Section III, Qualification Criteria. At the time of bidding, the Bidder shall use in its bid only Specialist Subcontractor(s) prequalified during the prequalification exercise.
- 24.3 Unless otherwise specified in the ADS, the Employer does not intend to execute certain specific parts of the Works by subcontractors selected in advance by the Employer (Nominated Subcontractors).

F. Prequalification of Applicants

- 25. Evaluation of Applications**
- 25.1 The Employer shall use the criteria and methods defined in Section III, Qualification Criteria to evaluate the qualifications of the Applicants and proposed subcontractors.
- 25.2 Only the qualifications of proposed subcontractors that have been identified in the Application pursuant to ITA 24.2 will be considered in the evaluation of an Applicant. However, the general experience and financial resources of subcontractors may not be added to those of the Applicant for purposes of prequalification of the Applicant.
- 25.3 Unless otherwise indicated in the ADS, this prequalification shall be for a single contract.
- 26. Employer's Right to Accept or Reject Applications**
- 26.1 The Employer reserves the right to accept or reject any Application, and to annul the prequalification process and reject all applications at any time, without thereby incurring any liability to Applicants
- 27. Prequalification of Applicants**
- 27.1 All Applicants, including their proposed subcontractors, whose applications have been determined to be substantially responsive to the requirements of the Prequalification Document and who have met or exceeded the specified criteria shall be prequalified by the Employer.
- 28. Notification of Prequalification**
- 28.1 Once the Employer has completed the evaluation of the Applications it shall notify all Applicants in writing of the names of those applicants who have been prequalified.

- 29. Invitation to Bid**
- 29.1 Promptly after the notification of the results of the prequalification, the Employer shall invite bids from all the Applicants that have been prequalified.
- 29.2 Bidders may be required to provide bid security in the form of a demand guarantee or other security acceptable to the Employer for an amount as specified in the bidding document.
- 29.3 A qualified firm or a member of a qualified joint venture may participate in only one bid for the contract. If a firm submits more than one bid, singly or in joint venture, all bids including that firm request will be rejected. This rule will not apply in respect of bids that include specialist subcontractors that are used by more than one bidder.
- 30. Changes in Qualifications of Applicants**
- 30.1 Any change in the qualification status of an Applicant after being prequalified in accordance with ITA Clause 27 shall be subject to the written approval of the Employer. Any such change shall be submitted to the Employer not later than fourteen (14) days after the date of the Invitation to Bid. Such approval shall be denied if as a consequence of any change,
- (a) the prequalified Applicant, after the change, no longer substantially meets the qualification criteria set forth in Section III, Qualification Criteria; or
 - (b) a new partner that had not been prequalified as an Applicant or a Specialist Subcontractor as per ITA 24.2 is added to a prequalified Applicant.

Section II. Application Data Sheet

A. General

ITA 1.1	The identification of the Invitation for Prequalification is:
ITA 1.1	The name of the Employer is:
ITA 1.1	The names, identification and number of the contracts are:
ITA 1.1	The name and identification number of the ICB are:
ITA 2.1	The name of the Borrower is:
ITA 2.1	The name of the Project is: Rehabilitation measures for the Beyneu – Uzbek Border railway section – Lot 2.1 Telecommunications

B. Contents of the Prequalification Document

ITA 7.1	<p>For clarification purposes only, the Employer's address is:</p> <p>Attention:</p> <p>Number and Street:</p> <p>Floor/Room Number:</p> <p>City: .</p> <p>ZIP Code:</p> <p>Country</p> <p>Telephone:</p> <p>Facsimile number:</p> <p>Electronic mail address:</p>
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C. Preparation of Applications

ITA 11.1 (e)	The Applicant shall submit with its application the following additional documents:
ITA 15.2	In addition to the original, the number of copies to be submitted with the application is:
ITA 15.3	The requirements regarding the legal instrument evidencing the authorization to represent and sign on behalf of the Applicant shall be:

D. Submission of Applications

ITA 17.1	<p>For application submission purposes only, the Employer's address is:</p> <p>Attention:</p> <p>Number and Street:</p> <p>Floor/Room Number:</p> <p>City:</p> <p>ZIP Code:</p> <p>Country:</p> <p>Telephone:</p> <p>Facsimile number:</p> <p>Electronic mail address:</p> <p>The deadline for application submission is:</p> <p>Date:</p> <p>Time:</p>
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E. Evaluation of Applications

ITA 23.1	A margin of preference apply in the bidding process corresponding to this prequalification. If a Margin of Preference applies, the procedure for evaluation will be specified in bidding document.
ITA 24.3	The Employer to execute certain specific parts of the Works by subcontractors selected in advance (Nominated Subcontractors). The specific parts of the works and the respective subcontractors are:

F. Prequalification of Applicants

ITA 25.3	<p>As stipulated in ITA 1.1, this prequalification exercise shall be for:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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Section III. Qualification Criteria

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1. Eligibility

Criteria	Compliance Requirements			Documents
Requirement	Single Entity	Joint Venture		Submission Requirements
		All Partners Combined	Each Partner	

1.1 Nationality

Nationality in accordance with ITA Sub-Clause 4.2.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Forms ELI -1.1; ELI -1.2 with attachments
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1.2 Conflict of Interest

No conflicts of interest in accordance with ITA Sub-Clause 4.4.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Application Submission Sheet
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1.3 ADB Eligibility

Not having been declared ineligible by ADB, as described in ITA Sub-Clause 4.5.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Application Submission Sheet
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1.4 Government-owned Entity

Applicant required to meet conditions of ITA Sub-Clause 4.6.	must meet requirement	must meet requirement	must meet requirement	not applicable	Forms ELI -1.1, ELI -1.2 with attachments
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2. Pending Litigation

Criteria	Compliance Requirements			Documents
Requirement	Single Entity	Joint Venture		Submission Requirements
		All Partners Combined	Each Partner	One Partner

2.1 Pending Litigation

All pending litigation shall be treated as resolved against the Applicant and so shall in total not represent more than percent of the Applicant's net worth.	must meet requirement by itself or as partner to past or existing JV	not applicable	must meet requirement by itself or as partner to past or existing JV	not applicable	Form LIT - 2
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3. Financial Situation

Criteria	Compliance Requirements			Documents
Requirement	Single Entity	Joint Venture		Submission Requirements
		All Partners Combined	Each Partner	

3.1 Historical Financial Performance

Submission of audited balance sheets or, if not required by the law of the applicant's country, other financial statements acceptable to the Employer, for the last years to demonstrate the current soundness of the applicants financial position and its prospective long-term profitability.	must meet requirement	not applicable	must meet requirement	not applicable	Form FIN - 3.1 with attachments
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Criteria	Compliance Requirements			Documents
Requirement	Single Entity	Joint Venture		Submission Requirements
		All Partners Combined	Each Partner	

3.2 Average Annual Construction Turnover

Minimum average annual construction turnover of US\$ calculated as total certified payments received for contracts in progress or completed, within the last years.	must meet requirement	must meet requirement	must meet of the requirement	must meet of the requirement	Form FIN - 3.2
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4. Experience

Criteria	Compliance Requirements			Documents
Requirement	Single Entity	Joint Venture		Submission Requirements
		All Partners Combined	Each Partner	

4.1 General Construction Experience

Experience under construction contracts in the role of contractor, subcontractor, or management contractor for at least the last years prior to the applications submission deadline.	must meet requirement	not applicable	must meet requirement	not applicable	Form EXP-4.1
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Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	

4.2 Specific Construction Experience

(a) Contracts of Similar Size and Nature

Participation as contractor, management contractor, or subcontractor, in at least contracts within the last years, each with a value of at least US\$ that have been successfully or are substantially completed and that are similar to the proposed works. The similarity shall be based on the physical size, complexity, methods, technology or other characteristics as described in Section VI, Scope of Contract.	must meet requirement	must meet requirement	not applicable	not applicable	Form EXP 4.2(a)
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Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	

4.2 Specific Construction Experience

(b) Construction Experience in Key Activities

For the above or other contracts executed during the period stipulated in 4.2(a) above, a minimum construction experience in the following key activities:	must meet all requirements	must meet all requirements	not applicable	not applicable	Form EXP-4.2(b)

Section IV. Application Forms

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Application Submission Sheet

Date:
IFP No.:
ICB No.:

To:

We, the undersigned, apply to be prequalified for the referenced ICB and declare the following.

- (a) We have examined and have no reservations to the Prequalification Document, including Addenda No(s)....., issued in accordance with ITA Clause 8.
- (b) We, including all subcontractors or suppliers for any part of the contract(s) resulting from this prequalification process, if any, have nationalities of eligible countries, in accordance with ITA Sub-Clause 4.2.
- (c) We, including any subcontractors or suppliers for any part of the contract(s) resulting from this prequalification, do not have any conflict of interest in accordance with ITA Sub-Clause 4.4.
- (d) We, including any subcontractors or suppliers for any part of the contract(s) resulting from this prequalification, have not been declared ineligible by the ADB.
- (e) We are a not government-owned entity. ⁽¹⁾
- (f) We, in accordance with ITA Sub-clause 24.1, plan to subcontract the following key activities or parts of the works:
- (g) We declare that the following commissions, gratuities, or fees have been paid or are to be paid with respect to the prequalification process:

Name of Recipient	Address	Reason	Amount
.....
.....

(If none has been paid or is to be paid, indicate "none.")

- (h) We understand that you may cancel the prequalification process at any time and that you are not bound either to accept any application that you may receive or to invite the prequalified applicants to bid for the contract(s) subject of this prequalification, without incurring any liability to the Applicants, in accordance with ITA Clause 26.

Name

In the capacity of

Signed

Duly authorized to sign the Application for and on behalf of

Date

(1) Government-owned entites must replace para (e) with the following statement: "We are a government-owned entity but meet the requirements of ITA Sub-Clause 4.6."

Form ELI – 1.1

Applicant Information Sheet

Date:
 IFP No.:

 ICB No.:

 Page of pages

Applicant Information	
Applicant's legal name	
In case of JV, legal name of each partner	
Applicant's actual or intended country of constitution	
Applicant's actual or Intended year of constitution	
Applicant's legal address in country of constitution	
Applicant's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITA Sub-Clauses 4.1 and 4.2. <input type="checkbox"/> 2. Authorization to represent the firm or JV named in above, in accordance with ITA Sub-Clause 15.3. <input type="checkbox"/> 3. In case of JV, letter of intent to form JV or JV agreement, in accordance with ITA Sub-Clause 4.1. <input type="checkbox"/> 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITA Sub-Clause 4.6. 	

Form ELI – 1.2

JV Information Sheet
for JV Partners and Specialist Subcontractors as per ITA 24.2

Date:
IFP No.:
.....
ICB No.:
.....
Pageofpages

Each member of a JV and Specialist Subcontractors as per ITA 24.2 must fill in this form

JV / Specialist Subcontractor Information	
Applicant's legal name	
JV Partner's or Subcontractor's legal name	
JV Partner's or Subcontractor's country of constitution	
JV Partner's or Subcontractor's year of constitution	
JV Partner's or Subcontractor's legal address in country of constitution	
JV Partner's or Subcontractor's authorized representative information (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <p><input type="checkbox"/> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITA Sub-Clauses 4.1 and 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the firm named above, in accordance with ITA Sub-Clause 15.3.</p> <p><input type="checkbox"/> 3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITA Sub-Clause 4.6.</p> <p><input type="checkbox"/> 4. In case of Specialist Subcontractors as per ITA 24.2 a formal intent to enter into an agreement.</p>	

Form LIT – 1

Pending Litigation

Applicant's Legal Name:

Date:

JV Partner Legal Name:

IFP No.:

.....

ICB No.:

Page of pages

Each Applicant or member of a JV must fill in this form

Pending Litigation			
<input type="checkbox"/> No pending litigation in accordance with Criteria 2.1 of Section III, Qualification Criteria <input type="checkbox"/> Pending litigation in accordance with Criteria 2.1 of Section III, Qualification Criteria, as indicated below			
Year	Matter in Dispute	Value of Pending Claim in US\$ Equivalent	Value of Pending Claim as a Percentage of Net Worth

Form FIN – 3.1

Financial Situation

Applicant's Legal Name:

Date:

JV Partner's Legal Name:

IFP No.:

ICB No.:

Pageofpages

Each Applicant or member of a JV must fill in this form

	Financial Data for Previous 3 Years [US\$ Equivalent]		
	Year 1:	Year 2:	Year 3:
1. Total Assets			
2. Current Assets			
3. Total Liabilities			
4. Current Liabilities			
5. Profits Before Taxes			
6. Profits After Taxes			

7. Net Worth [= 1 - 3]			
8. Working Capital [= 2 - 4]			
9. Return on Equity [= 5 / 7 of prior year]			

Attached are copies of the audited balance sheets, including all related notes, and income statements for the last three years, as indicated above, complying with the following conditions.

- All such documents reflect the financial situation of the Applicant or partner to a JV, and not sister or parent companies.
- Historic financial statements must be audited by a certified accountant.
- Historic financial statements must be complete, including all notes to the financial statements.
- Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Form FIN – 3.2

Average Annual Construction Turnover

Applicant's Legal Name:

Date:

JV Partner's Legal Name:

IFP No.:

ICB No.:

Page of pages

Each Applicant or member of a JV must fill in this form

Annual Turnover Data for the Last 3 Years (Construction only)			
Year	Amount Currency	Exchange Rate	US\$ Equivalent
Average Annual Construction Turnover			

The information supplied should be the Annual Turnover of the Applicant or each member of a JV in terms of the amounts billed to clients for each year for work in progress or completed, converted to US Dollars at the rate of exchange at the end of the period reported.

Form EXP – 4.1

General Construction Experience

Applicant's Legal Name:

Date:

JV Partner's Legal Name:.....
.....

IFP No.:

ICB No.:

Pageofpages

Each Applicant or member of a JV must fill in this form

General Construction Experience				
Starting Month Year	Ending Month Year	Years	Contract Identification and Name Name and Address of Employer Brief Description of the Works Executed by the Applicant	Role of Applicant

Form EXP – 4.2 (a)

Specific Construction Experience

Applicant's Legal Name:

Date:

JV Partner's Legal Name:

IFP No.:

.....

ICB No.:

Page of pages

Fill up one (1) form per contract.

Contract of Similar Size and Nature	
Contract No of	Contract Identification
Award Date	Completion Date
Role in Contract	<input type="checkbox"/> Contractor <input type="checkbox"/> Management Contractor <input type="checkbox"/> Subcontractor
Total Contract Amount	US\$
If partner in a JV or subcontractor, specify participation of total contract amount	Percent of Total
	Amount
Employer's Name Address Telephone/Fax Number E-mail	
Description of the similarity in accordance with Criteria 4.2(a) of Section III	

Form EXP – 4.2(b)

Specific Construction Experience in Key Activities

Applicant's Legal Name: Date:

JV Partner's Legal Name: IFP No.:

Subcontractor's Legal Name (as per ITA 24.2): ICB No.:

..... Page : ofpages

Fill up one (1) form per contract

Contract with Similar Key Activities		
Contract No of	Contract Identification	
Award Date	Completion Date	
Role in Contract	<input type="checkbox"/> Contractor <input type="checkbox"/> Management Contractor <input type="checkbox"/> Subcontractor	
Total Contract Amount	US\$	
If partner in a JV or subcontractor, specify participation of total contract amount	Percent of Total	Amount
Employer's Name Address Telephone Number Fax Number E-mail		
Description of the key activities in accordance with Criteria 4.2(b) of Section III		

Section V. Eligible Countries

PART 2 – Requirements

Section VI. Scope of Contract

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A. Requirements

1. Brief Description of the Scope

The Scope of works refers to the conclusions of the feasibility study of the rehabilitation measures for the Balykchi – Bishkek – Kazakh Border railway section in Kyrgyzstan.

Historically the section under study belongs to the line Lugovaya – Bishkek – Balykchi as it is in the following Figure A.

Figure A - The Lugovaya – Bishkek – Balykchi railway line



After the collapse of the former Soviet Union, the line has been split into two sections because of the introduction of the national border between Kyrgyzstan and Kazakhstan: the Lugovaya - border (61 km) and the border – Bishkek – Balykchi (322 km).

The administrative change could not change so much the situation since the two sections are still working in conjunction. Furthermore services along the line are operated up to Lugovaya by the Kyrgyz Railways and so they will be up to 2007 at least.

Besides this fact, improvements along the section from Balykchi to the border should be certainly managed by the Kyrgyz Railway Administration while the section up to Lugovaya belongs to the Kazakhstan Railways but maintenance/services are operated by the Kyrgyz Railways. Consequently the issue of the competence has required to consider two different Feasibility Studies for rehabilitation measures concerning sections of the same line.

Improvements along the main line have to be financed and managed by two different Railway Administrations. Consequently the study has to consider two different Feasibility Studies for rehabilitation measures concerning sections of the same line.

The Feasibility Study carried out for the Kyrgyz side of the line (from Balykchi to the Border) has outlined just the strict need of rehabilitation of the line for the following issues:

- a. permanent way (from Bishkek to the Kazakh border);
- b. main structures (bridges, avalanche sheds, ballast quarry rehabilitation);

The option promoted represents a low cost option which had to take into account severe budgetary constraints of the Kyrgyz Railways.

Consequently activities for item a. will be mainly performed by the Kyrgyz Railways using materials, machines and plants separately provided and only item b. will be implemented by a Contractor. That would permit to face the most urgent necessities of the line, as well as in building the indispensable structures that guarantee the line protection from land-slides. It would allow the acceleration of the capital maintenance of the remaining network putting at disposal recovered rails and machines to implement works with Kyrgyz railways personnel.

Item a. has been consequently split into three Lots: purchase of machines, provision of PW materials and purchase of sleeper factory while the present Lot 3.4 is for:

- the rehabilitation of 5 bridges: three were at chainages km 3694+10, Km 3708+5, Km 3765+6; one crossing Konda river and one crossing a channel near station of Djil Aryk (4 bridges are 2X6m span; 1 bridge is 1X6m span) (the railways have been not able to give a more precise location).
- ballast quarry rehabilitation near the station of Djil Aryk;
- construction of a new avalanche shed for a total length of about 500 m and slope stabilisation over the existing avalanche shed between Djil Arik and R148 block post.

2. Major Contract Components

The major contract components are the following:

- replacement of beams of existing bridges;
- maintenance of bridges piers and abutments
- interventions for the slope stability over the existing avalanche shed;
- construction of a new avalanche shed;
- rehabilitation of a ballast quarry.

3. Estimated Quantities of Major Components

The estimated quantities are the following:

- 18 beams to be replaced;
- 14 piers/abutments to be maintained;
- construction of 500m of avalanche shed;
- rehabilitation of equipment of one ballast quarry

4. Methods Required

No specific method is required.

5. Contract Implementation Period

The contract implementation period is 26 months

B. Supplementary Information

1. Project Country

Kyrgyz Republic

2. Contract Site

The Balykchi – Bishkek – Kazakh Border railway section

C. Facilities to be Provided by the Employer

Asian Development Bank

Design-Build and Turnkey Contracts

Standard Bidding Document
Single Stage – One Envelope

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FIDIC Conditions of Contract for Design-Build and Turnkey,
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Preamble

Instructions

These standard bidding documents are intended to serve as a model for Design-Build and Turnkey type of contracts. The use of these standard bidding documents is not mandatory. However, the procedures and practices presented in these standard documents have been developed through broad international experience, and may be helpful in drafting bidding documents for Design-Build and Turnkey contracts.

Use of these standard documents requires among other things completing the specific details and deleting inappropriate provisions in all the places indicated. The following directions should be observed when using the documents:

- (i) All the documents listed in the Contents either under Option A or Option B are normally required. However, they should be adapted as necessary to the circumstances of the particular project and the Borrower.
- (ii) Option A, Single Stage bidding procedure. **In the Single Stage bidding procedure the bidders submit one envelope containing the price proposal and the technical proposal. The envelope is opened in public and the total amount of each bid and any alternative bid and other relevant details are read out and recorded. The bid is evaluated and following approval by ADB, the award of contract is made to the lowest evaluated substantially responsive bidder.**

The Single Stage bidding procedure should be utilized for contracts where the civil works content is very high such as for roads, pipelines and power transmission line projects where there is not likely to be problems in the evaluation of alternative proposals for machinery or equipment. In accordance with ADB established procedures, prequalification of bidders is required for civil works, turnkey contracts and contracts for the fabrication of expensive and technically complex items to ensure that only experienced and financially capable firms will submit bids. Option A assumes prequalification.

- (iii) Option B, Two-Envelope bidding procedure. **In the Two-Envelope bidding procedure the bidders submit simultaneously two sealed envelopes, one containing only the technical proposal and the other the price proposal. Initially only the technical proposals are opened at the date advised in the bidding documents. The technical proposals are evaluated and if the Executing Agency requires amendments or changes to the technical proposals such amendments and changes are discussed with the bidders. The bidders are allowed to revise or adjust their technical proposals to meet the requirements of the Executing Agency. Bidders will be requested to submit supplementary price proposals which should only contain the changes in price resulting from the changes in the technical proposals. The objective of the exercise is to ensure that all technical proposals conform to an acceptable technical standard and meet the technical solution required by the Executing Agency. Bidders who do not wish to amend their technical proposals may withdraw from the bidding process. At a date advised by Employer, and after the evaluation of technical proposal has been approved by ADB, the original and supplementary price proposals are opened in public. The price proposals are evaluated and following approval by ADB, the award of contract is made to the lowest evaluated substantially responsive bidder.**

The Two-Envelope bidding procedure should be utilized for projects where alternative technical proposals are possible such as for certain types of machinery or equipment or for certain types of manufacturing plants. As only experienced bidders are expected to submit bids for such projects and as prequalification is not generally required for equipment and machinery, postqualification of bidders is included in the bidding documents. In the detailed evaluation of the bidders' technical proposals the qualifications of the bidders in respect to experience and financial capacity are evaluated first of all and bidders who do not meet the postqualification criteria are not considered further.

- (iv) The Bank consider that the majority of Design-Build and Turnkey contracts will be covered by either Option A or Option B. There maybe instances where the Executing Agency requires a Two-Stage bidding procedure. **The Two-Stage bidding procedure differs from the Two-Envelope bidding procedure in that bidders are first invited to submit their technical proposals, and following evaluation of the technical proposals including discussions and clarifications between the Executing Agency and the bidders, and following approval by the Bank, the bidders are invited to submit price proposals based on the technical proposals and any modifications agreed to during the discussions and clarifications with the Executing Agency.**

The most common situations where a Two-Stage bidding procedure's adopted, are: (a) the Executing Agency is unsure of the specifications it should adopt and would like first to see the options available to it in the market; and (b) where the Executing Agency is aware of its options in the market but for a given set of performance requirements there are two or more equally acceptable technical solutions available to the Executing Agency.

- (v) In addition, the Executing Agency may consider it appropriate to include prequalification with a Two-Envelope or Two-Stage bidding procedure. In such instances approval should be sought from the Bank.
- (vi) Specific details, such as the name of the Employer, address for bid submission, etc., should be furnished in the spaces indicated.
- (vii) The footnotes and "boxed" notes in the standard documents and notes preceding each standard document and preceding or incorporated in the text are not part of the contract documents, but contain guidance and instructions for the user. Do not retain them, in actual bidding documents.
- (viii) Where alternative Clauses or texts are shown, select those which best suit the particular works and discard the alternative text which is not used.
- (ix) The criteria for bid evaluation in the Instructions to Bidders must be carefully reviewed in every case and new or different criteria may be added. Only evaluation criteria that are appropriate for use for the particular works in question should be retained, the rest should be deleted. In case new criteria are added, the Instructions to Bidders must specify which formulae and/or limits will be used to express in monetary terms the result of the application of such criteria.
- (x) When using the FIDIC Conditions of Contract, "Part I -General Conditions" should preferably be retained intact to facilitate perusal by bidders and review by ADB. Modifications to the General Conditions should be introduced in "Part II - Conditions of Particular Application".

- (xi) The subsection entitled "Part II - Conditions of Particular Application" included in these standard documents only provides guidance on the various topics that should or may be covered in that Part. The user of these standard documents must specifically draft provisions for that Part appropriate to each particular project.

To facilitate review by ADB, Executing Agencies should state if, and to what extent, these standard documents have been used in the preparation of actual bidding documents submitted for review.

Invitation for Bids

Single Stage Bidding Procedure

INVITATION FOR BIDS (SINGLE STAGE BIDDING PROCEDURE)

Notes on the Invitation for Bids

The Invitation for Bids (see ADB Guidelines for Procurement) should be issued to all contractors who were determined by the Borrower to be qualified in accordance with the Borrower's prequalification procedure. This procedure must be reviewed by ADB if the potential contract is to be eligible for ADB financing (see ADB Guidelines for Procurement).

Its purpose is to supply information to enable prequalified bidders to decide on their participation.

The Invitation for Bids should also be incorporated in the bidding documents.

INVITATION FOR BIDS

Date: _____ [of issue of invitation]

Loan No.: _____

Contract No. _____

1. The _____ [name of borrower] has received¹ a loan from the Asian Development Bank (ADB) towards the cost of _____ [name of project] and it is intended that part of the proceeds of this loan will be applied to eligible payments under the contract for _____ [name of Contract]. Bidding is open to all prequalified bidders from eligible source countries of the Asian Development Bank.
2. The _____ [name of Employer] ("the Employer") invites sealed bids from prequalified eligible bidders for design-build and completion of _____ ("the Works") [brief description of the Works and statement of the principal quantities involved].
3. Bidders may obtain further information from, and inspect and acquire the bidding documents, at _____ [mailing address, street address, and cable/telex/facsimile numbers].²
4. A complete set of bidding documents may be purchased by interested eligible bidders on submission of a written application to the above office, and upon payment of a nonrefundable fee of _____ [insert amount and currency].³
5. All bids must be accompanied by a bid security of _____ [indicate amount]⁴ or an equivalent amount in a freely convertible currency, and must be delivered to _____ [indicate address and exact location] at or before _____ [hours] on _____ [date].⁵ Bids will be opened immediately thereafter in the presence of bidders' representatives who choose to attend.⁶

¹ Substitute "has applied for" if appropriate.

² The Borrower and the Employer may be the same or different entities. The text of the Invitation for Bids and the texts of the other documents herein must indicate which agency will act as the Employer.

³ The fee chargeable should only be nominal to cover reproduction and mailing costs and to ensure that only bona fide bidders will apply for bidding documents. An amount of between US\$50 and US\$500 equivalent is considered appropriate, depending on the size and complexity of the Contract.

⁴ Insert the amount indicated in Sub-Clause 18.1 of Section 1, Instructions to Bidders, Bid Security.

⁵ Coordinate with sub-Clause 23.1 of Section 1, Instructions to Bidders, Deadline for Submission of Bids.

⁶ Coordinate with sub-Clause 26, 1, Instructions to Bidders, Bid Opening.

Include para. 6 only if Domestic Preference has been expressly provided in the Loan Agreement and is included in the Instructions to Bidders.

6. In the comparison of bids, the Employer will grant a margin of preference to

[Alternative A]⁷ eligible goods manufactured in

[Alternative B]⁷ eligible domestic contractors (including eligible joint ventures of foreign contractors and domestic contractors) from

the Employer's country in accordance with the procedures outlines in the bidding documents.

⁷ Select only one of the two alternatives, See Instructions to Bidders, Clause 33, Alternative A and Alternative B.

Section 1

Instructions to Bidders

Single Stage Bidding Procedure

SECTION 1 INSTRUCTIONS TO BIDDERS (SINGLE STAGE BIDDING PROCEDURE)

Notes on the Instructions to Bidders

Section 1 should provide the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the Employer. It should give information on bid submission, opening and evaluation, and on the award of contract.

Matters governing the performance of the Contractor under the Contract, payments under the Contract, or matters affecting the risks, rights, or obligations if the parties under the Contract are normally not included in this section, but rather in the sections on general or particular conditions of contract. If duplication of a subject is inevitable in the different sections of the documents, the user should exercise care to avoid contradiction or conflict between clauses dealing with the same topic.

Section 1 - Instruction to Bidders

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Section 1. Instructions to Bidders

1. Scope of Bid	A. General
2. Source of Funds	<p>1.1 The _____ <i>[name of Employer]</i>⁸ (hereinafter referred to as "the Employer"), wishes to receive bids for design-build and completion of _____</p> <p><i>[insert the name of the Project and specific Works, and a summary description of its key elements, so as to clearly identify and distinguish it from other works], as defined in these bidding documents (hereinafter referred to as "the Works").</i></p> <p>1.2 The successful bidder will be expected to complete the Works within _____ <i>[months/weeks]</i>⁹ from the date of commencement of the Works.</p> <p>2.1 The _____ <i>[name of Borrower]</i> has received¹⁰ a loan from Asian Development Bank (hereinafter referred to as "the ADB"), towards the cost of _____</p> <p><i>[name of project]</i> and intends to apply part of the proceeds of this loan to eligible payments under the contract (hereinafter referred to as "the Contract") for which this Invitation to Bid is issued. Payment by the ADB will be made only at the request of the <i>[name of Borrower]</i> and upon approval by the ADB in accordance with the Loan Agreement, and will be subject in all respects to the terms and conditions of that Agreement. Except as the ADB may specifically otherwise agree, no party other than the <i>(name of Borrower)</i> shall derive any rights from the Loan Agreement or have any rights to the loan proceeds.</p>
3. Eligible Bidders	<p>3.1 This Invitation to Bid is open to prequalified bidders only. Each bidder (including all members of a joint venture and all subcontractors of a bidder) shall be from an eligible source country as listed in Section 8.</p> <p>3.2 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer as the Employer shall reasonably request.</p> <p>3.3 Bidders shall not be under a declaration of ineligibility for corrupt or fraudulent practices issued by the ADB in accordance with Sub-Clause 39.1(c).</p>

⁸ See definitions of the terms used in these (Instructions to Bidders in Sub-Clause 1.1 of Section 2: Part 1- General Conditions.

⁹ For contracts of less than one year duration, use weeks. The figure indicated here should be the same as shown in the Appendix to Bid. (Section 5)

¹⁰ Substitute "has applied for" if appropriate.

4. Eligible Materials, Equipment and Services

4.1 The materials, equipment, and services to be supplied under the Contract shall have their origin in eligible source countries as defined in Sub-Clause 3.1 above and all expenditures made under the Contract will be limited to such materials, equipment, and services. At the Employer's request, bidders may be required to provide evidence of the origin of materials, equipment, and services.

4.2 For purposes of Sub-Clause 4.1 above, "services" means the works and all project-related services including design services.

4.3 For purposes of Sub-Clause 4.1 above, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing or substantial or major assembling of components, a commercial recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.

5. Qualification of the Bidder

5.1 To be qualified for award of Contract, bidders shall:

- (a) submit a written power of attorney authorizing the signatory of the bid to commit the bidder; and
- (b) have adequate financial capacity and technical capability to undertake the Contract. This will include the updating and reassessment of information which may previously have been considered during prequalification and an assessment of bidder's proposals regarding work methods, scheduling and resourcing which shall be provided in sufficient detail to confirm the bidder's capability to complete the works in accordance with the Employer's Requirements and the time for completion.¹¹

5.2 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements:

- (a) the bid, and in case of a successful bid, the Form of Contract Agreement, shall be signed so as to be legally binding on all partners;
- (b) one of the partners shall be authorized to be in charge; and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;
- (c) the partner in charge shall be authorized to incur liabilities, receive payments and receive instructions for and on behalf of any or all partners of the joint venture and the entire execution of the Contract;

¹¹ If considered necessary, reference may also be made to work in hand, future commitments, and current litigation.



- (d) all partners of the joint venture shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Bid Form and the Form of Contract Agreement (in case of a successful bid); and
- (e) a copy of the agreement entered into by the joint venture partners shall be submitted with the bid.

5.3 Bidders shall also submit proposals of work methods and schedule in sufficient detail to demonstrate the adequacy of the bidder's proposals to meet the Employer's Requirements and the completion time referred to in Sub-Clause 1.2 above.

6. One Bid per Bidder

6.1 Each bidder shall submit only one bid either by itself, or as a partner in a joint venture. A bidder who submits or participates in more than one bid will cause all those bids to be rejected.

7. Cost of Bidding

7.1 The bidder shall bear all costs associated with the preparation and submission of its bid and the Employer will in no case be responsible or liable for those costs.

8. Site Visit

8.1 The bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for the design-build and completion of the Works. The costs of visiting the Site shall be at the bidder's own expense.

8.2 The bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the bidder, its personnel and agents, will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof and will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection.

8.3 The Employer may conduct a Site visit concurrently with the Pre-Bid Meeting referred to in Clause 20.

B. Bidding Documents

9. Content of Bidding Documents

9.1 The bidding documents are those stated below, and should be read in conjunction with any Addenda issued in accordance with Clause 11:

- Section 1 Invitation for Bids
- 2 Instructions to Bidders
- 3 Part I - General Conditions
- 4 Part II - Conditions of Particular Application
- Employer's Requirements

- 5 Form of Bid and Appendix to Bid
- 6 Sample Forms
- 7 Schedules
- 8 List of Eligible Member Countries
- 9 Drawings

9.2 The bidder is expected to examine carefully the contents of the bidding documents. Failure to comply with the requirements of bid submission will be at the bidder's own risk. Pursuant to Clause 29, bids which are not substantially responsive to the requirements of the bidding documents will be rejected.

10. Clarification of Bidding Documents

10.1 A prospective bidder requiring any clarification of the bidding documents may notify the Employer in writing or by fax (hereinafter the term "fax" is deemed to include electronic transmission such as facsimile, cable and telex) at the Employer's address indicated in the Invitation for Bids. The Employer will respond to any request for clarification which it receives earlier than _____ *[insert numbers]*¹² days prior to the deadline for submission of bids. Copies of the Employer's response, including a description of the inquiry, will be forwarded to all purchasers of the bidding documents.

11. Amendment of Bidding Documents

11.1 At any time prior to the deadline for submission of bids, the Employer may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder, modify the bidding documents by issuing addenda.

11.2 Any addendum thus issued shall be part of the bidding documents pursuant to Sub-Clause 9.1, and shall be communicated in writing or by fax to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum by fax to the Employer.

11.3 To afford prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may extend the deadline for submission of bids, in accordance with Clause 23.

C. Preparation of Bids

12. Language of Bid

12.1 The bid, and all correspondence and documents related to the bid, exchanged between the bidder and the Employer shall be written in the English language. Supporting documents and printed literature furnished by the bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in the English language, in which case, for purposes of interpretation of the bid the English translation shall prevail.

¹² Adequate time should be allowed for potential bidders to take the Employer's response into account in bid preparation. Thirty days are usually sufficient, but for large and complex works with long bid preparation periods, a minimum period of 42 to 56 days may be necessary, depending on the circumstance. It may be necessary to extend the deadline for submission of bids (see Sub-Clause 23.2).

**13. Documents
Comprising the
Bid**

- 13.1 The bid submitted by the bidder shall comprise the following:
- (i) Bid Form and Appendix to Bid;
 - (ii) Form of Bid Security;
 - (iii) Power of Attorney;
 - (iv) Information on Qualification;
 - (v) Confirmation of Eligibility;
 - (vi) Schedules of Prices:
 - I. Design, Drawings and Documentation
 - II. Plant and Equipment, including Mandatory Spare Parts Supplied from outside the Employer's Country;
 - III. Plant and Equipment, including Mandatory Spare Parts supplied from within the Employer's Country;
 - IV. Civil Works, Installation and Other Services;
 - V. Grand Summary; and
 - VI. Recommended Spare Parts.
 - (vii) Schedule of Payment;
 - (viii) Schedule of Coefficients and Indices for Price Adjustment;
 - (ix) Schedule of Major Items of Equipment;
 - (x) Schedule of Major Items of Constructional Plant;
 - (xi) Schedule of Key Personnel;
 - (xii) Schedule of Subcontractors;
 - (xiii) Schedule of Recommended Spare Parts; and
 - (xiv) Schedule of Compliance with the Bidding Document; and
 - (xv) Any other materials required to be completed and submitted by bidders in accordance with these Instructions to Bidders.

**14. Bid Form and
Price Schedules**

- 14.1 The Bidder shall complete the Bid Form and the appropriate Price Schedules furnished in the bidding documents in the manner and detail indicated therein, following the requirements of Clauses 15 and 16;

15. Bid Prices

- 15.1 Unless specified otherwise in Employer's Requirements, Bidders shall quote for the entire facilities on a "single responsibility" basis such that the total bid price covers all the Contractor's obligations mentioned in or to be reasonably inferred from the bidding documents in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the facilities. This includes all requirements under the Contractor's responsibilities for testing, precommissioning and commissioning of the facilities and, where so required by the bidding documents, the acquisition of all permits, approvals and licenses, etc, operation maintenance and training services and such other items and services as may be specified in the bidding documents, all in accordance with the requirements of the Conditions of Contract.

- 15.2 Bidders shall give a breakdown of the prices in the manner and detail called for in the Schedules of Prices.
- 15.3 In the Schedules, Bidders shall give the required details and a breakdown of their prices, including all taxes, duties, levies, and charges payable in the Employer's country as of twenty eight (28) days prior to the deadline for submission of bids, as follows:
- (a) Design including all necessary drawings and documentation for the Work.
 - (b) Plant and equipment to be supplied from outside the Employer's country (Schedules of Prices: II) shall be quoted on a CIF port-of entry. In addition, the FOB price and import duties and taxes shall also be indicated separately.
 - (c) Plant and equipment, manufactured or fabricated within the Employer's country (Schedules of Prices: III) shall be quoted on an EXW (ex-factory, ex-works, ex-warehouse or off-the-shelf, as applicable) basis and shall be inclusive of all costs as well as duties and taxes paid or payable on components and raw materials incorporated or to be incorporated in the facilities. In addition value added taxes and sales taxes shall be indicated separately.
 - (d) Civil Works, Installation and Other Services shall be quoted separately (Schedules of Prices: IV) and shall include rates or prices for all labor, contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including local transportation, operations and maintenance services, the provision of operations and maintenance manuals, training, etc. where identified in the bidding documents, as necessary for the proper execution of the Civil Works, Installation and Other Services.
 - (e) Recommended spare parts shall be quoted separately (Schedules of Prices: VI) as specified in either subparagraph (b) or (c) above in accordance with the origin of the spare parts.
- 15.4 The terms EXW, CIF, and FOB shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce, Paris.
- 15.5 Prices quoted by the bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost of labor, fuel, material, equipment and transport components in accordance with the procedures specified in Sub Clause 13.17 of the Conditions of Particular Application. The price adjustment provision will not be taken into

16. Bid Currencies

consideration in bid evaluation. Bidders are required to indicate the source of labor, equipment and material indices in the Schedule of Coefficients and Indices for Price Adjustment.

- 16.1 Prices shall be quoted in the following currencies:
- (a) the prices shall be quoted either in the currency of the bidder's home country, or in United States Dollars:
 - (b) a bidder expecting to incur a portion of its expenditures in the performance of the Contract in more than one currency, and wishing to be paid accordingly, shall so indicate in its Bid; and
 - (c) if some of the contract expenditures related to Civil Works, Installation and Other Services pursuant to Clause 15.3(d) are to be incurred in the borrowing country, such expenditures shall be quoted in either foreign and/or local currency, depending upon the currency in which the costs are to be incurred.
- 16.2 Bidders shall indicate their expected foreign currency requirements in the Appendix to Bid.
- 16.3 Bidders may be required by the Employer to clarify their local and foreign currency requirements, and to substantiate that the amounts included in the Schedule of Prices and shown in the Appendix to Bid are reasonable and responsive to Sub-Clause 15.1 in which case a detailed breakdown of its foreign currency requirements shall be provided by the bidder.
- 16.4 During the progress of the Works, the foreign currency portions of the outstanding balance of the Contract Price may be adjusted by agreement between the Employer and the Contractor to reflect any changes in foreign currency requirements for the contract, in accordance with Clause 13.15 of the Conditions of Particular Application. Any such adjustment shall be effected by comparing the amounts quoted in the bid with the amounts already used in the Works and the Contractor's future needs for imported items.

17. Bid Validity

- 17.1 Bids shall remain valid for a period of _____ *[specify number]*¹³ days after the date of bid opening specified in Sub-Clause 26.1.
- 17.2 In exceptional circumstances, prior to expiry of the original bid validity period, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the responses thereto shall be made in

¹³ This period should be realistic, allowing sufficient time to evaluate the bids, bearing in mind the complexity of the Works, and the time required for obtaining references, clarifications, clearances and approvals and for notification of the award. Normally the validity period should not exceed 180 days.

18. Bid Security

- writing or by fax. A bidder may refuse the request without forfeiting its bid security. A bidder agreeing to the request will not be required or permitted to modify its bid, but will be required to extend the validity of its bid security for the period of the extension, and in compliance with Clause 18 in all respects.
- 18.1 The Bidder shall furnish, as part of its bid, a bid security in the amount of _____ *[indicate amount currency of Employer's country]*¹⁴ or an equivalent amount in a freely convertible currency.
- 18.2 The bid security shall, at the bidder's option, be in the form of a certified check, bank draft, standby letter of credit or guarantee from a reputable bank.¹⁵ The format of the bank guarantee shall be in accordance with the sample form of bid security included in Section 6; other formats may be permitted, subject to the prior approval of the Employer. The bid security shall remain valid for 28 days beyond the original validity period for the bid, and beyond any period of extension subsequently requested under Sub-Clause 17.2.
- 18.3 Any bid not accompanied by an acceptable bid security shall be rejected by the Employer as nonresponsive.
- 18.4 The bid securities of unsuccessful bidders will be returned as promptly as possible, but not later than 28 days after the expiration of the period of bid validity.
- 18.5 The bid security of the successful bidder will be returned when the bidder has signed the Contract Agreement and furnished the required performance security.

¹⁴ This amount should be the same as quoted in the Invitation for Bids. To avoid leakage of bidder's prices originating in the financial Institution issuing the security, a fixed sum should be specified, in preference to a percentage of the bid price. The sum should not exceed two percent of the estimated cost of the Works. Alternatively, if the Employer wishes to specify a percentage of the bid price, it should be indicated as a "minimum of ____ percent" to enable bidders to provide in excess of the minimum and thus mask their prices.

¹⁵ The Bank does not allow restrictions with respect to the provision of the bid security such as requiring (i) the issue of the bid security by a bank in the Employer's country; (ii) endorsement by a bank in the Employer's country; or (iii) a foreign bank determined by the bidder to be acceptable to the Employer.

- 18.6 The bid security may be forfeited
- (a) if the bidder withdraws its bid, except as provided in Sub-Clause 25.1 ;
 - (b) if the bidder does not accept the correction of its bid price, pursuant to Sub-Clause 30.2; or
 - (c) in the case of a successful bidder, if it falls within the specified time limit to
 - (i) sign the Contract Agreement,
 - (ii) furnish the required performance security, or
 - (iii) furnish the required domestic preference security.¹⁶

Alternative Proposals by Bidders

Alternative A: To be used when alternative proposals are not permitted.

19. Alternative Proposals by Bidders

- 19.1 Bidders shall submit offers which comply with the documents, including the basic Employer's Requirements as indicated in the bidding documents. Alternatives will not be considered. The attention of bidders is drawn to the provisions of Clause 29 regarding the rejection of bids which are not substantially responsive to the requirements of the bidding documents.

Alternative Proposals by Bidders

Alternative B: Technical alternative accepted, but only that of the lowest evaluated substantially responsive bidder considers.

- 19.1 Bidders wishing to offer technical alternatives to the Employer's Requirements must first price the Employer's Requirements as described in the bidding documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methods. Only the technical alternatives, if any, of the lowest evaluated bidder conforming to the basic technical requirements shall be considered by the Employer.

¹⁶ Delete where domestic preference is not applicable or where domestic preference security is not required.

20. Pre-Bid Meeting

- 20.1 The bidder or its official representative is invited to attend a pre-bid meeting which will take place at _____ [address of venue] on _____ [time and date].¹⁷
- 20.2 The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 20.3 The bidder is requested to submit any questions in writing or by fax, to reach the Employer not later than one week before the meeting.
- 20.4 Minutes of the meeting, including the text of the questions raised and the responses given, will be transmitted without delay to all purchasers of the bidding documents. Any modification of the bidding documents listed in Sub-Clause 9.1 which may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to Clause 11 and not through the minutes of the pre-bid meeting.
- 20.5 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a bidder.

21. Format and Signing of Bid

- 21.1 The bidder shall prepare one original and _____ [insert number]¹⁸ copies of the bid documents comprising the bid as described in Clause 13 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL" and "COPY" as appropriate. In the event of discrepancy between them, the original shall prevail.
- 21.2 The original and all copies of the bid shall be typed or written in indelible ink (in the case of copies, photostats are also acceptable) and shall be signed by a person or persons duly authorized to sign on behalf of the bidder, pursuant to Sub-Clauses 5.1 (a) or 5.2 (b), as the case may be. All pages of the bid where entries or amendments have been made shall be initialed by the person or persons signing the bid.
- 21.3 The bid shall contain no alterations, omissions or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the bid.
- 21.4 The bidder shall furnish information as described in the Form of Bid on commission or gratuities, if any, paid or to be paid relating to this Bid, and to contract execution if the bidder is awarded the contract.

¹⁷ Not later than 28 days before the deadline for bid submission. It should take place concurrently with the Site visit; if any (see Sub Clause 8.3).

¹⁸ Usually two, more if essential.

22. Sealing and Marking of Bids

D. Submission of Bids

22.1 The bidder shall seal the original and each copy of the bid in an inner and an outer envelope, duly marking the envelopes as "ORIGINAL" and "COPY".

22.2 The inner and outer envelopes shall

(a) be addressed to the Employer at the following address: _____
[insert address of office for bid submission]; and

(b) bear the following identification:

- Bid for _____
[name of Contract]
- Bid Reference Number: _____ [insert loan and contract number]
- DO NOT OPEN BEFORE _____ [time and date for bid opening, per Sub-Clause 26.1]

22.3 In addition to the identification required in Sub-Clause 22.2, the inner envelope shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared "late" pursuant to Clause 24.

22.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the bid.

23. Deadline of Submission of Bid

23.1 Bids must be received by the Employer at the address specified above no later than _____
[insert time and date, they should be the same as those given in the Invitation for Bids].

23.2 The Employer may, at its discretion, extend the deadline for submission of bids by issuing an addendum in accordance with Clause 11, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will thereafter be subject to the deadlines extended.

24. Late Bids

24.1 Any bid received by the Employer after the deadline for submission of bids prescribed in Clause 23 will be rejected and returned unopened to the bidder.

25. Modification and Withdrawal of Bid

25.1 The bidder may modify or withdraw its bid after bid submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the deadline for submission of bids.

25.2 The bidder's modification or withdrawal notice shall be

26. Bid Opening	<p>prepared, sealed, marked and delivered in accordance with the provisions of Clause 22, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL", as appropriate. A withdrawal notice may also be sent by fax but must be followed by a signed confirmation copy.</p> <p>25.3 No bid may be modified by the bidder after the deadline for submission of bids, except in accordance with Sub-Clauses 25.2 and 30.2.</p> <p>25.4 Withdrawal of a bid during the interval between the deadline for submission of bids and the expiration of the period of bid validity specified In Sub-Clause 17.1 may result in the forfeiture of the bid security pursuant to Sub-Clause 18.6.</p> <p>E. Bid Opening and Evaluation</p> <p>26.1 The Employer will open the bids, including modifications made pursuant to Clause 25, in the presence of bidders representatives who choose to attend, at _____ <i>[insert time and date]</i>¹⁹ at the following location: _____ <i>[insert Address]</i>. The bidders' representatives who are present shall sign a register evidencing their attendance.</p> <p>26.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 25 shall not be opened.</p> <p>26.3 The bidders' names, the Bid Prices, including any alternative Bid Price, any discounts, bid modifications and withdrawals, the presence or absence of bid security, and such other details as the Employer may consider appropriate, will be announced and recorded by the Employer' at the opening. The bidders' representatives will be required to sign this record.</p> <p>26.4 The Employer shall prepare minutes of the bid opening, including the information disclosed to those present in accordance with Sub-Clause 26.3.</p>
27. Process to Be Confidential	<p>27.1 Information relating to the examination, clarification, evaluation and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process. Any effort by a bidder to influence the Employer's processing of bids or award decisions may result In the rejection of the bidder's bid.</p>
28. Clarification of	<p>28.1 To assist in the examination, evaluation and comparison of</p>

¹⁹ Time and date should be as close as possible to those given for the deadline of submission of bids (Sub-Clause 23.1).

Bids and Contacting the Employer		bids, the Employer may, at its discretion, ask any bidder for clarification of its bid. The request for clarification and the response shall be in writing or by fax, but no change in the price or substance of the bid shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in, accordance with Clause 30.
	28.2	Subject to Sub-clause 28.1, no bidder shall contact the Employer on any matter relating too its bid from the time of the bid opening to the time the contract is awarded. If the bidder wishes to bring additional information to the notice of the Employer, it should do so in writing.
	28.3	Any effort by the bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the bidder's bid.
29. Preliminary Examination of Bids and Determination of Responsiveness	29.1	Prior to the detailed evaluation of bids, the Employer will determine whether each bid (i) meets the eligibility criteria of the ADB; (ii) has been properly signed; (iii) is accompanied by the required securities; (iv) is substantially responsive to the requirements of the bidding documents; and (v) provides any clarification and/or substantiation that the Employer may require pursuant to Clause 28.
	29.2	A substantially responsive bid is one which conforms to all the terms, conditions and requirements of the bidding documents, without material deviation or reservation. A material deviation of reservation is one (i) which affects in any substantial way the scope, quality or performance of the Works; (ii) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the bidder's obligations under the Contract; or (iii) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
	29.3	If a bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal. of the nonconforming deviation or reservation.
30. Correction of Errors	30.1	Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Arithmetic errors will be rectified on the following basis. If there is a discrepancy between the unit rate and the total cost that is obtained by multiplying the unit rate and quantity, the unit rate shall prevail and the total cost will be corrected unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit rate, in which case the total cost as quoted will govern and the unit rate corrected. If there is a discrepancy between the total bid amount and the sum of total costs, the sum of the total costs shall prevail and the total bid amount will be corrected.

31. Conversion to Single Currency

30.2 The amount stated In the Form of Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount of bid, its bid will be rejected, and the bid security may be forfeited in accordance with Sub-Clause 18.6 (b).

31.1 The Employer will convert the amounts in various currencies in which the Bid Price is payable to the currency of the Employer's country at the selling exchange rates officially prescribed for similar transactions as established by

[name of central bank in Employer's country or other authoritative source for similar transactions] on

[Alternative A]²⁰ the date of opening of bids.

[Alternative B]¹³ the earlier of the dates: (i) the date of the decision to award the Contract; or (ii) the date of expiry of the initial period of bid validity specified in Sub-Clause 17.1.

32. Evaluation and Comparison of Bid

32.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 29.

32.2 For plant and equipment, the comparison shall be of the ex-factory price of plant and equipment offered from within the Employer's country, (such price to include all costs as well as duties and taxes paid or payable on components and raw material or to be incorporated in the plant and equipment) and the CIF-named port of destination price offered from outside the Employer's country; plus the cost of local transportation, civil works, installation and other services required under the contract. The Employer's comparison will also include the costs resulting from application of the evaluation procedures described in Sub-Clause 32.4.

32.3 The employer will carry out a detailed evaluation of the bids in order to determine whether the bidders confirm to meet the prequalification requirements and whether the bids are substantially responsive to the requirements set forth in the bidding documents. In order to reach such a determination, the Employer will examine the information supplied by the Bidders and other requirements in the bidding documents, taking into account the following factors.

(a) Qualification

(i) the determination will take into account the Bidder's updated financial technical and

²⁰ Select only one of the two alternatives.

production capabilities and past performance; it will be based upon an examination of the documentary evidence submitted by the Bidder, pursuant to Sub-Clause 5.1(b), as well as such other information as the Employer deems necessary and appropriate; and

- (ii) an affirmative determination will be a prerequisite for the Employer to continue with the evaluation of the bid; a negative determination will result in rejection of the Bidder's bid.

(b) Technical

- (i) overall completeness and compliance with the Employer's Requirements; the technical merits of plant and equipment offered and deviations from the Employer's Requirements; suitability of the facilities offered in relation to the environmental and climatic conditions prevailing at the site; quality, function and operation of any process control concept included in the bid;
- (ii) achievement of specified performance criteria by the facilities;
- (iii) type, quantity and long-term availability of spare parts and maintenance services;
- (iv) _____

Include any other specific additional criteria that the Employer deems necessary or prudent to be taken into consideration. Note that the method of application must be included in Sub-Clause 32.4(f).

(c) Commercial

- (i) the cost of all quantifiable deviation and omissions from the contractual and commercial conditions and the Employer's Requirements as identified in the bid, and other deviations and omissions not so identified;
- (ii) compliance with the time schedule called for



in Appendix to Bid and evidenced as needed milestone schedule provided in the bid;

- (iii) the projected operating costs during the life of the facilities;
- (iv) the functional guarantees of the facilities offered; and
- (v) the extra cost of work, services, facilities etc., required to be provided by the Employer or their parties.

32.4 Pursuant to Sub-Clause 32.3, the following evaluation methods will be followed:

- (a) **Contractual and commercial deviations:** The evaluation shall be based on the evaluated cost for fulfilling the contract in compliance with all commercial, contractual and technical obligations under this bidding document. The Employer will make its own assessment of the cost of any deviations for the purpose of ensuring fair comparison of bids.
- (b) **Time Schedule:** The plant and equipment covered by this bidding are required to be shipped, installed and the facilities completed within the period specified in Sub-Clause 1.2 and the Appendix to the Bid.

Alternative A: To be used when alternative time schedules are not permitted.

Bidders submitting bids which deviate from the time schedule specified will be rejected.

Alternative B: To be used when alternative time schedules are permitted.

No credit will be given to earlier completion. However, Bidders offering a completion date beyond the period specified shall be adjusted in the evaluation by adding (*indicate factor*)²¹ to the bid price. Bids offering a completion date beyond

²¹ The rate may be a fixed amount per, month or prorata per week, of delay related to the loss of benefits to the Employer.

(indicate maximum period)²² shall be rejected.

- (c) **Operating costs:** Since the operating costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated and based on prices furnished by the Bidder in Schedules of Prices: II and III as well as on past experience of the Employer or other employers similarly placed, Such costs shall be added to the bid price for evaluation.

Alternative A: To be used when the factors are specified in this clause.

The operating cost factors for calculation are:

- (i) number of years for initial period of operation [*it is recommended that the initial period of operation not exceed the usual period before a major overhaul of the facilities. Usually between five to ten years.*]
- (ii) operating costs [*e.g. fuel and/or other input, unit cost, annual and total operational requirements.*]
- (iii) rate, in percent, to be used to discount to present value all annual future costs calculated under (ii) above for the period specified in (i).

Alternative B: To be used when the methodology of calculation is specified elsewhere in the bidding documents.

The methodology of calculation is specified in _____²³.

The price of recommended spare parts quoted in Schedule of Prices: VI shall not be considered for evaluation.

- (d) **Functional Guarantee of the facilities:**
- (i) Bidders shall state the functional guarantees (e.g. performance, efficiency, consumption) of the proposed facilities in response to the

²² The accepted period between the minimum and maximum time for completion should be such that the percentage or amount corresponding to the maximum period for completion should be less than or equal to 1% the percentage or amount of liquidated damages stated in The Appendix to Bid.

²³ Insert relevant section and clause no.



Employer's Requirements. Plant and equipment offered shall have a minimum (or a maximum, as the case may be) level of functional guarantees specified in the Employer's Requirements to be considered responsive. Bids offering plant and equipment with functional guarantees less (or more) than the minimum (or maximum) specified shall be rejected.

(ii) For the purposes of evaluation, an adjustment of *(indicate factor)*²⁴ will be added to the bid price for each drop (or excess) in the responsive functional guarantees: offered by the Bidder below (or above) the value specified in the Employer's Requirements.

(e) **Work, services, facilities etc., to be provided by the Employer:** Where bids include for the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding documents, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation; and

(f) _____

32.5 (a) Any adjustments in price which result from the above procedures shall be added, for purposes of Comparative evaluation only, to arrive at an "Evaluated Bid Price" Bid prices quoted by Bidders shall remain unaltered.

(b) The Employer reserves the right to accept or reject any variation, deviation or alternative offer. Variations, deviations, and other factors which are in excess of the requirements of the bidding documents or otherwise result in the accrual of unsolicited benefits to the Employer shall not be taken into account in bid evaluation.

(c) The estimated effect of the price adjustment provisions of the Conditions of Particular Application,

²⁴ Adjustment factors used for bid evaluation will be *[amount in the currency of bid evaluation]* for each one percent (1%)- or prorate for less than one percent - *(drop or excess)* of the nor specified in the Employer's Requirements *[reference]*
 or
 the value committed in the responsive bid with the most performing functional guarantees. *[Delete the inapplicable option.]*

applied over the period or execution of the Contract, shall not be taken bid evaluation.

- (d) If the bid of the successful bidder is substantially below the Employer's estimate for the contract, the Employer may require the bidder to produce detailed price analyses to demonstrate the internal consistency of those prices. After evaluation of the price analysis, the Employer may require that the amount of the performance security set forth in Clause 38 be increased at the expense of the successful bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the Contract.

Domestic Preference Scheme

Domestic preference may be accorded only if it is expressly permitted by the Loan Agreement and at the request of the Borrower.

Alternative A: *Where the CIF cost of equipment to be used on the permanent works is less than 60 per cent of the total value of works then the contract can be classified as civil works and preference will be granted to eligible domestic contractors in accordance with the following provisions:*

33. Domestic Preference: Preference for Domestic Bidders

33.1 In comparing domestic bids with foreign bids, a margin of preference will be granted to eligible domestic contractors, as defined below, in accordance with the following provisions.

- (a) For application of domestic preference, all responsive bids will first be classified into the following two categories:
- (i) Category I: bids offered by domestic contractors and joint ventures eligible for the preference in accordance with the criteria set forth in Sub-Clause 33.2 below; and
 - (ii) Category II: bids offered by other contractors.

The Employer will review each bid to confirm the appropriateness of, or to modify as necessary, the Category to which the bid was assigned by the bidder in preparing it.

- (b) The lowest evaluated bid of each Category will then be determined by comparing all evaluated bids in each Category among themselves.
- (c) Such lowest evaluated bids will next be compared with each other and if, as a result of this comparison, a bid from Category I is found to be the lowest, it will be selected for the award of Contract.
- (d) If however, as a result of the comparison under (c) above, the lowest bid is found to be from Category II, it will be further compared with the lowest evaluated bid from Category I. For the purpose of this further comparison only, an upward adjustment will be made to the lowest evaluated bid price of Category II by adding an amount equal to seven and one-half per cent (7 1/2%) of the bid price. If, after such comparison, the Category I bid is determined to be the lowest, it will be selected for the award of contract; if not, the lowest evaluated bid from Category II will be selected.

33.2 Domestic contractors and joint ventures between a domestic contractor(s) and its foreign partner(s) shall meet the following minimum criteria for eligibility of the Domestic Preference Scheme:

- (a) Domestic contractor(s):
 - (i) firms are incorporated in (*Name of the Borrowing Country*); and
 - (ii) firms will not subcontract to foreign contractors more than fifty per cent (50%) of the total value of their work.
- (b) A joint venture between a domestic contractor(s) and its foreign partner(s) will be eligible for the preference only if:
 - (i) the domestic partner(s) are individually eligible for the preference according to the criteria stated above;
 - (ii) the domestic partner(s) would not qualify for the Works on technical or financial grounds without the foreign participation; and
 - (iii) the domestic partner(s) will, under the arrangements proposed, carry out at least

fifty per cent (50%) of the Works measured in terms of value.

- 33.3 Bidders applying for the preference shall provide all evidence, including details of ownership, necessary to prove that they are qualified for the preference according to the criteria set forth in Sub-Clause 33.2.
- 33.4 If the Contract is awarded to a bidder who has received the preference pursuant to the foregoing provisions, such contractor shall not subcontract to foreign contractors more than fifty per cent (50%) of the total value of their work.
- 33.5 A joint venture which is awarded the Contract as a result of the application of the above domestic preference provisions, shall furnish the Employer, together with the Performance Security a "Domestic Preference Security" to guarantee that the profit and loss distribution and work-sharing arrangements with which the joint venture satisfied the criteria of Sub-Clause 33.2 (b) above will not be modified throughout the execution of the Contract. The Domestic Preference Security shall be issued in accordance with the requirements of Sub-Clause 4.25 of the Conditions of Particular Application, for an amount equivalent to the difference between the joint venture's bid price and the bid price of the lowest foreign bid.

Alternative B: In large and complex packages for Design-Build and Turnkey Contracts where the CIF cost of equipment to be used in the permanent works equals or exceeds 60 per cent of the total value of works, then the preference cannot be granted to the contractor but to domestically manufactured equipment in accordance with the following provisions:

33. Domestic Preference: Preference for Domestic Goods

- 33.1 A margin of preference shall be applied to domestically manufactured equipment in accordance with the following provisions:
- (a) The preference margin shall not be applied to the whole package but only to the domestically manufactured equipment within the package.
 - (b) Equipment offered from abroad shall be quoted CIF and equipment offered locally shall be offered EXW (free of sales and similar taxes).
 - (c) All other cost components, such as design, works installation and supervision shall be quoted separately.

34. Award	<p>(d) In the comparison of bids, only the CIF price in each bid of the equipment offered from outside the Employer's country shall be increased by the applicable duty and other taxes payable by a non-exempt importer, or by 15 per cent whichever is less.</p> <p>(e) If duties vary from item to item within a package, the appropriate tariff for each item shall apply.</p> <p>(f) No preference shall be applied for any associated services or works included in the package.</p> <p>(g) Bidders should not be permitted or required to modify the mix of local and foreign equipment after bid opening.</p>
F. AWARD OF CONTRACT	
35. Employer's Right to Accept any Bid and to Reject any or all Bids	<p>34.1 Subject to Clause 35, the Employer will award the Contract to the bidder whose bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest Evaluated Bid Price, provided that such bidder has been determined to be (i) eligible in accordance with the provisions of Clause 3; and (ii) qualified in accordance with the provisions of Clause 5.</p> <p>35.1 Notwithstanding Clause 34, the Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the Employer's action.</p>
36. Notification of Award	<p>36.1 Prior to expiration of the period of bid validity prescribed by the Employer, the Employer will notify the successful bidder by fax, confirmed by registered letter, that its bid has been accepted. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") shall name the sum which the Employer will pay the Contractor in consideration of the execution, completion and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Conditions of Contract called "the Contract Price").</p> <p>36.2 The notification of award will constitute the formation of the Contract.</p> <p>36.3 Upon the furnishing by the successful bidder of a performance security (and domestic preference security where required) the Employer will promptly notify the other bidders that their bids have been unsuccessful.</p>
37. Signing of	<p>37.1 At the same time that he notifies the successful bidder that its</p>

Contract Agreement

bid has been accepted, the Employer will send the bidder the Form of Contract Agreement provided in the bidding documents, incorporating all agreements between the parties.

37.2 Within _____ [insert number]²⁵ days of receipt of the Form of Agreement, the successful bidder shall sign the Form and return it to the Employer.

38. Performance Security

38.1 Within _____ [insert number]²⁶ days of receipt of the notification of award from the Employer, the successful bidder shall furnish to the Employer a performance security in an amount of _____ [insert figure]²⁷ percent of the Contract Price in accordance with the Conditions of Contract. The form of performance security provided in Section 6 of the bidding documents may be used or some other form acceptable to the Employer.

38.2 Failure of the successful bidder to comply with the requirements of Clauses 37 or 38 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security.

38.3 The above provisions shall also apply to the furnishing of a domestic preference security; where required, and in the terms specified in Clause 33.²⁸

39. Corrupt or Fraudulent Practices

39.1 The ADB requires that Borrowers (including beneficiaries of ADB loans), as well as bidders/suppliers/contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In Pursuance of this policy, the ADB:

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

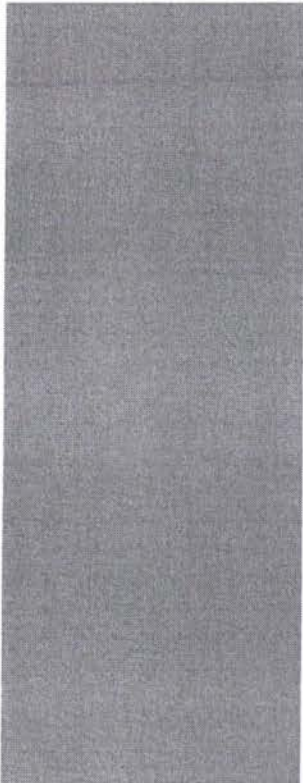
(i) "corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; and

²⁵ Normally 28 days is sufficient.

²⁶ Same period as allowed under Sub-Clause 37.2.

²⁷ An amount of 10 percent of the Contract Price is commonly acceptable.

²⁸ Delete this sub-clause if domestic preference is not included or if domestic preference security is not required. Note that domestic preference security is only used in respect to preference for domestic bidders and not for preference of domestic goods.



(ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition;

(b) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

(c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded an ADB-financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, an ADB-financed contract.

39.2

Furthermore, bidders shall be aware of the provision stated in Sub-Clause 1.16 and Sub-Clause 15.5 of the Conditions of Contract, Part II - Conditions of Particular Application.

Section 2

Part I – General Conditions of Contract

Section 2. Part I – General Conditions

Notes on the Conditions of Contract

The Conditions of Contract comprise two parts: Part I – General Conditions (Section 2 of this document), and Part II – Conditions of Particular Application (Section 3 of this document).

The International Federation of Consulting Engineers (FIDIC), has recently prepared the First Edition (1995) of Conditions of Contract for Design-Build and Turnkey Contracts. FIDIC Part I – General Conditions is included herein, complete and without any changes as Section 2 of these documents.

Any other standard national or international Conditions of Contract acceptable to the ADB may be used for works procured by international competitive bidding. When another form is used, the "Table of Contents" of the FIDIC Conditions of Contract should be used as a checklist of the completeness of the provisions of that other form, and be revised accordingly.

The standard text of the FIDIC General Conditions of contract should be retained intact to facilitate its reading and interpretation by bidders and its review by the ADB. Any amendments and additions to the General Conditions, specific to the contract in hand, should be introduced in the "Particular Conditions of Contract". Sample Particular Conditions, applicable to the above FIDIC Conditions of Contract, are included under Section 3, and are recommended for use for Bank financed contracts instead of the Particular Conditions published by FIDIC. This is to ensure that ADB Guidelines for procurement and requirements are complied with.

The use of standard conditions of contract throughout a country will ensure comprehensiveness of coverage, general acceptability of its provisions, savings in time and cost for bid preparation and review.

Copies of the FIDIC Conditions of Contract can be obtained from:

*FIDIC Secretariat
P.O. Box 86
1000 Lausanne 12
Switzerland
Facsimile: 41 21 653 5432
Telephone: 41 21 653 5003*

Section 3. Part II – Conditions of Particular Application

Sub-Clause 1.1 Definitions	(ADB-R)	<p>Amend subpara 1.1.1.3 of Sub-Clause 1.1 by adding the following words at the end:</p> <p style="padding-left: 40px;">"The word 'tender' is synonymous with bid'."</p> <p>Amend subpara 1.1.1.4 of Sub-Clause 1.1 by adding the following words at the end:</p> <p style="padding-left: 40px;">"The words 'Appendix to Tender' are synonymous with the words 'Appendix to Technical Proposal' and 'Appendix to Price Proposal'.²⁹</p> <p>Add the following subparagraph to Sub-Clause 1.1:</p> <p style="padding-left: 40px;">"1.1.2.7 "ADB" means the Asian Development Bank."</p>
Sub-Clause 1.4 Law and Language	(ADB-R)	<p>Replace the text of Sub-Clause 1.4 and add the following:</p> <p style="padding-left: 40px;">"The law of the Contract is the law of _____.³⁰</p> <p style="padding-left: 40px;">The language is the English language."</p>
Sub-Clause 1.5 Contract Agreement	(ADB-R) (*)	<p>Substitute the wordings in Part I with the following:</p> <p style="padding-left: 40px;">"A Contract Agreement in the form annexed, with such modifications as may be necessary to record the agreement reached shall be executed. The costs of stamp duties and similar charges imposed by the law shall be borne by the Employer."</p>
Sub-Clause 1.6 Priority of Documents	(ADB-R)	<p>Replace the list of documents listed under (a) to (h) and add the following:</p> <p style="padding-left: 40px;">"(a) the Contract Agreement; (b) the Letter of Acceptance; (c) the Employer's Requirements; (d) the Bid; (e) the Conditions of Contract, Part II; (f) the Conditions of Contract, Part I; (g) the Schedules; (h) the Drawings; and (i) the Contractor's Proposal."</p>

²⁹ Include only where Option B, the Two-Envelope bidding procedure, has been incorporated as the Instructions to Bidders.

³⁰ Insert the name of country where the Contract will be carried out.

**Sub-Clause 1.15
Confidentiality**

(F-O) Additional sub-clause:

"The Contractor shall treat the details of the contract as private and confidential, except to the extent necessary to carry out its obligations under it. The Contractor shall not publish, permit to be published or disclose any particulars of the Contract in any trade or technical paper or elsewhere without the prior consent in writing of the Employer."

**Sub-Clause 1.16
Inspections and
Audit by the ADB**

(ADB-R) Add the following sub-clause:

"The Contractor shall permit the ADB to inspect the Contractor's accounts and records relating to the performance of the Contract and to have them audited by auditors appointed by the ADB, if so required by the ADB."

**Sub-Clause 3.1
Employer
Representative's
Duties and
Authority**

(ADB-R) Add the following clause as required:

"The Employer's Representative shall obtain the specific approval of the Employer before taking action under the following clauses³¹ of the Conditions of Contract Part I.

- (a) approving sub-contracting of any part of the Works under Sub-Clause 4.5.
- (b) certifying additional cost to the Contract Price except if such a certification would adjust the Contract Price by more than *[insert figure]*³² percent.
- (c) granting an extension of time for completion under Sub-Clause 8.3.
- (d) suspending progress of part or all of the Works under Sub-Clause 8.8.
- (e) issuing a variation under Clause 14, except if such a variation would increase the Contract Price by no more than *[insert figure]* percent.
- (f) issuing Taking-Over Certificate for the whole of the Works under Sub-Clause 10.1.
- (g) issuing Performance Certificate for the Works under Sub-Clause 12.9.

Notwithstanding the obligation to obtain approval as set out above, if in the opinion of the Employer's Representative, an emergency occurs affecting the safety of life or of the Works or of adjoining property, it may, without relieving the Contractor of any of its duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the

³¹ The list should be extended or reduced as necessary.

³² Usually 10 percent is an acceptable limit.

<p>Sub-Clause 4.1 General Obligations</p>	<p>(ADB-R) (*)</p>	<p>Employer's Representative be necessary to abate or reduce the risk. The Contractor shall forthwith comply with the instructions of the Employer's Representative despite the absence of approval of the Employer. The Employer's Representative shall determine the extra cost to the Contractor for carrying out of such instruction and obtain the Employer's approval for an addition to the Contract Price."</p> <p>Add the following sentence to proceed the existing text under Sub-Clause 4.1:</p> <p>"The Contractor is required to check the design criteria and calculations (if any) included in the Employer's Requirements, to confirm their correctness, in its bid and to assume full responsibility for them."</p>
<p>Sub-Clause 4.2 Performance Security</p>	<p>(ADB-R) (*)</p>	<p>Replace the text of Sub-Clause 4.2 with the following:</p> <p>"The Contractor Shall provide security for its proper performance of the Contract to the Employer within 28 days after the receipt of the Letter of Acceptance. The performance security shall be in the form of a bank guarantee, issued either (a) by a bank located in the country of the Employer or a foreign bank through a correspondent bank located in the country of the Employer, or (b) directly by a foreign bank acceptable to the Employer. The performance security shall be denominated in the types and proportions of currencies in which the Contract Price is payable. When providing such security to the Employer, the Contractor shall notify the Employer's Representative of so doing.</p> <p>Without limitation to the provision of the preceding paragraph, whenever the Employer's Representative determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor at the written request of the Employer's Representative shall promptly increase the value of the performance security in that currency by an equal percentage".</p>
<p>Sub-Clause 4.3 Contractor's Representative</p>	<p>(F-O)</p>	<p>At the end of Sub-Clause 4.3 add:</p> <p>"If the Contractor's Representative is not fluent in the English language, the Contractor shall make a competent interpreter available during all working hours."</p>
<p>Sub-Clause 4.4 Co-ordination of the Works</p>	<p>(ADB-R) (*)</p>	<p>Modify the first sentence of Sub-Clause 4.4 to read:</p> <p>"The Contractor shall be responsible for the co-ordination and proper execution of the Works, including co-ordination with other contractors and organizations to the extent specified in the Employer's Requirements."</p>

<p>Sub-Clause 4.9 Site Data</p>	<p>(F-R) (*)</p>	<p>Modify the last sentence of paragraph 1 of Sub-Clause 4.9 to read:</p> <p>"The Contractor shall be responsible for interpreting all data including data listed elsewhere in the Contract as open for inspection at _____ [insert particulars of the office or offices where such data is stored]".</p>
<p>Sub-Clause 4.14 Program</p>	<p>(ADB-R) (*)</p>	<p>Delete the third sentence of Sub-Clause 4.14 indicated below:</p> <p>"Unless otherwise stated and late finish dates".</p> <div style="border: 1px solid black; background-color: #cccccc; padding: 5px; margin: 10px 0;"> <p><i>When the Loan Agreement permits and the Instructions to bidders provide for Domestic Preference include additional Sub-Clause 4.25.</i></p> </div>
<p>Sub-Clause 4.25 Domestic Preference Security</p>	<p>(ADB-R) (*)</p>	<p>"If the Contractor consists of a joint venture which is awarded the contract through the application of the domestic preference, the Contractor, (i) throughout the execution of the Contract, shall not modify the work-sharing characteristics of the joint venture with which it satisfied the criteria of eligibility for being awarded the contract in application of the domestic preference; and (ii) concurrently with the above performance security, shall provide security ("the domestic preference security") to guarantee that such characteristics of the joint venture will not be so modified. The domestic performance security shall be in the form of an "on demand" bank guarantee or standby letter of credit acceptable to the Employer, for an amount in a convertible currency equivalent to the difference between the joint venture's bid price and the bid price of the lowest foreign bid. The domestic preference security shall be issued either (a) by a bank located in the country of the Employer, or (b) directly by a foreign bank acceptable to the Employer.</p> <p>The domestic preference security shall be valid until the Contractor has substantially completed the Works and a Taking-Over Certificate has been issued by the Employer's Representative in accordance with the provisions of Clause 10.1 and such security shall be returned to the Contractor together with the Taking-Over Certificate.</p> <p>The cost of providing the security shall be borne by the Contractor."</p>
<p>Sub-Clause 5.2 Construction Documents</p>	<p>(ADB-R) (*)</p>	<p>In Sub-Clause 5.2 delete sub-paragraph (a) and substitute:</p> <p>"(a) Construction shall not commence until the Contractor receives from the Employer's Representative approval of the Construction Documents relevant to the design and construction of such parts; provided always that if the</p>

Employer's Representative fails to give his ruling at the end of 28 days, despite the Contractor's written reminder at the end of the 21 days "review period", then the Contractor may proceed with the construction as though approval had been given".

Sub-Clause 5.4
Technical
Standards
& Regulations

(ADB-R) Add the following sentence to the end of the Sub-Clause 5.4:
(*)

"In respect of technical specifications and standards, any national or international standards which promise to confer equal or better quality than the standards specified will also be acceptable."

If the Works involve the use by the Contractor of a design previously provided to the Employer by others add the following additional Sub-clause 5.10.

Sub-Clause 5.10
Employer's
Warranty for
Patent Rights

(F-O) "If any matter, for which the Contractor is not liable to indemnify the Employer under Sub-Clause 5.9, causes the infringements (or allegation of infringement) by the Contractor of any patent, registered design, copyright, trademark or other intellectual property right, the Employer shall indemnify the Contractor against all claims, damages, charges and costs which the Contractor may incur.

The Contractor shall promptly notify the Employer of any claim under this Sub-Clause. The Employer may at his own cost, conduct negotiations for the settlements of such claims, and any litigation or arbitration that may arise from it. The Contractor shall not make any admission which might be prejudicial to the Employer, unless the Employer has failed to take over the conduct of the negotiations or litigation within a reasonable time after having been so requested. The Contractor shall, at the request and cost of the Employer, assist it in contesting any such claim or action and shall be repaid all reasonable cost incurred."

Sub-Clause 6.8
Contractor's
Superintendence

(F-R) At the end of Sub-Clause 6.8 add:
(*)

"A reasonable proportion of the Contractor's superintending staff shall have a working knowledge of the English language, or the Contractor shall have sufficient competent interpreters available on site during all working hours."

Other Sub-Clauses may be added to take account of the circumstances and locality of the site. A few examples, to be numbered as appropriate, are provided hereunder:

Sub-Clause 6.____
Foreign staff
and Labour

(F-O) "The Contractor may import such staff, and labourers as are required in order to execute the Works. The Contractor must ensure that all such staff and labour are provided with

the required visas and work permits. The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of all persons whom the Contractor recruited and employed for the purpose of or in connection with the Contract. The Contractor shall be responsible for such persons as are to be returned until they shall have left the Site or, in the case of foreign nationals who have been recruited outside the Country, shall have left it."

Sub-Clause 6.____ (F-O)
**Measures against
 Insect & Pest
 Nuisance**

"The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the Site from insect and pest nuisance, and to reduce the dangers to health and the general nuisance occasioned by the same. The Contractor shall provide its staff and labour with suitable prophylactics for the prevention of malaria and take steps to prevent the formation of stagnant pools of water. The Contractor shall comply with all the regulations of the local health authorities and shall arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried out at least once a year or as instructed by such authorities."

Sub-Clause 6.____ (F-O)
Epidemics

"In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government or the local medical or sanitary authorities, for the purpose of dealing and overcoming the same."

Sub-Clause 6.____ (F-O)
**Alcoholic
 Liquors or
 Drug**

"The Contractor shall not, otherwise than in accordance with the statutes, ordinances and government regulations or orders for the time being in force, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his Subcontractors, agents staff or labour."

Sub-Clause 6.____ (F-O)
**Arms and
 Ammunition**

"The contractor shall not give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer to the same as aforesaid."

Sub-Clause 6.____ (F-O)
**Festivals and
 Religious Customs**

"The Contractor shall in all dealings with his staff and labour have due regard to all recognized festivals, days of rest and religious or other customs."

Include the following eligibility requirements.

Sub-Clause 7.7 (ADB-R) (*)
**Restriction on
 Eligibility**

(a) Any materials, equipment, services or design services which will be incorporated in or required for the Contract, as well as the Contractor's Equipment and other supplies, shall have their origin in eligible source countries as listed in Section 8.

- (b) For the purpose of this clause, "services" means the works and all project-related services including design services.
- (c) For the purposes of this clause, "origin" means the place where the materials and equipment were mined, grown, produced, or manufactured, or from which the services are provided.
- (d) The origin of Goods and Services is distinct from the nationality of the Supplier."

If a bonus for early completion is deemed desirable, add the following Sub-Clause 8.12.

**Sub-Clause 8.12
Bonus for early
Completion**

(F-O) If the Contractor achieves completion of the Works, or Section (if any) prior to the Time for Completion, the Employer shall pay to the Contractor the relevant sum stated in the Appendix to Tender (as bonus for early completion) for every calendar day which shall elapse between the date stated in the relevant Taking-Over Certificate and the relevant time prescribed in Sub-Clause 8.2.

**Sub-Clause 13.1
The Contract
Price**

(ADB-R) Amend sub-paragraphs (a) and (b) to read as follows:
(*
" (a) Payment for the Works shall be made on a lump sum basis.

(b) The Contract Price shall be adjusted for changes in the cost of Labour, materials and other matters."

Delete "Sub-Clause 13.16" at the end of Sub-paragraph (c) and replace with "Sub-Clauses 13.16 and 13.17."

If Sub-Clause 13.1(a) is not to apply, the method of determining the Contract Price should be defined in additional Sub-Clauses, as envisaged in the last sentence of Sub-Clause 13.1. If the requirements involve measurements, the following working might be appropriate for one of such additional Sub-Clauses.

**Sub-Clause 13._
Remeasurement**

(F-O) "The Employer's Representative shall ascertain and determine by measurement the value of those parts of the Works which are to be remeasured in accordance with the Contract (note: the parts must be defined, here or elsewhere). Such parts of the Works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the Contract. The

Employer's Representative shall, when he requires any such part of the Works to be measured, give reasonable notice to the Contractor's Representative, who shall promptly:

- (a) attend or sent a qualified representative to assist the Employer's Representative in making such measurement, and
- (b) supply all particulars required by the Employer's Representative.

Should the Contractor not attend, or neglect or omit to send such representative, then the measurement made by the Employer's Representative or approved by him shall be taken to be the correct measurement of such part of the Works."

**Sub-Clause 13.2
Advance Payment**

(ADB-R)
(*)

Modify the third sentence of this Sub-Clause to read:

"The Employer's Representative shall issue an Interim Payment Certificate for the first installment after (i) execution of the Form of Agreement by the parties hereto (ii) provision by the Contract of the Performance Security in accordance with Sub-Clause 4.2 and (iii) 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."

**Sub-Clause 13.3
Interim Payment
Certificate**

(ADB-R)

Amend the text of items (a) and (b) to read:

- " (a) the estimated contract value, at base rates and prices, of the Construction Documents produced and the Works (including variations) executed up the end of the month.
- (b) any amount to be added and deducted for changes in cost and legislation in accordance with Sub-Clauses 13.16 and 13.17."

If the interim payments are not based on a Schedule of Payments an alternative method of interim Valuation may be adopted as described in the following sub-clause which will be used to replace the original sub-clause 13.4.

**Sub-Clause 13.4
Interim
Valuation**

(F-O)

"Prior to commencing construction of the Permanent Works, the Contractor shall submit a bill of principal quantities of the Permanent Works (referred to in this Sub-Clause as "the BPQPW") together with such supporting information and calculations as the Employer's Representative may reasonably require. The BPQPW shall include the anticipated final quantities of the principal items of Permanent Works, which shall have been priced using

all-in rates such that the total amount equals the Contract Price. The BPQPW shall not contain priced items for design or for Temporary Works; the value of each element of such work, and of any other work elements not described in the BPQPW, shall each be included in the rates for Permanent Works to be constructed after such element is carried out. The BPQPW shall be subject to the approval of the Employer's Representative which may at any time be withdrawn, and shall be without prejudice to the final amount due under the Contract. The BPQPW shall be revised and reissued if it appears at any time before Taking-Over that it will not fully represent the Permanent Works when complete.

During the Time for Completion, the contract value for the purpose of sub-paragraph (a) of Sub-Clause 13.3 shall not exceed the amount calculated from the current BPQPW, based on the quantities of Permanent Works which have been constructed in accordance with the Contract. The Contractor's interim statement shall be in the same form as that of the current BPQPW and shall be accompanied by the Contractor's signed statement that the current BPQPW attached hereto (including anticipated final quantities) and the as-constructed quantities are all correct: each such statement shall also be accompanied by a Construction Certificate, signed by the Contractor's Representative, certifying that the part of the Works constructed to date complies with the Contract. However, the Contractor may propose such lesser amount as seems reasonable, supported with appropriate calculations on a similar basis to the procedure described in this Sub-Clause."

**Sub-Clause 13.5
Plant and
Materials for
Permanent
Works**

(ADB-R) Item (a) (v) is amended to read as follows:

"(v) the Plant and Materials and the currencies of payment therefore are those shown in the Appendix to Bid."

If payment for Plants and Materials for the Permanent Works is to be made prior to their arrival at site a new sub-clause as shown below may be used in place of the original Sub-Clause 13.5.

(F-O) "Interim Payment Certificates shall include (i) and additional amount of Plant and Materials which have been shipped to the Site for incorporation in the Permanent Works, and (ii) a deduction when payment is due under Sub-Clause 13.5. The Employer's Representative shall determine each addition and deduction in accordance with the following provisions:

(a) no addition shall be included in the Interim Payment Certificate unless, in the opinion of the Employer's Representative.



- (i) Plant and Materials have been shipped to the Country, enroute to the Site, in accordance with the Contract;
 - (ii) the contractor has submitted a clean shipped bill of lading or other evidence of shipment, evidence of payment of freight and insurance, and other documents as the Employer's Representative may reasonably require, together with an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the amount due under sub-paragraph (b) of this Sub-Clause: such guarantee shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;
 - (iii) the Contractor's records of the requirements, orders receipts and use of Plant Materials are kept in a form approved by the Employer's Representative, and such records are available for inspection by the Employer's Representative;
 - (iv) the Contractor has submitted a statement of the Cost of acquiring and shipping the Plant and Materials to the port (or other place) of entry into the Country, together with such documents as may be required for the purpose of evidencing such Cost; and
 - (v) the Plant and Materials are those listed for this Sub-Clause in the Appendix to Bid;
- (b) the additional amount to be certified shall be the equivalent of seventy percent of the cost of the Plant and Materials delivered to the port (or other place) of entry into the Country, as determined by the Employer's Representative after review of the documents mentioned in sub-paragraph (a) above, taking account of the contract value of such Plant and Materials as determined and considered appropriate by the Employer's Representative;
- (c) the amount of the deduction for any Plant and Materials for which payment is due under Sub-Clause 13.5 shall be equivalent to the addition previously certified by the Employer's Representative for such Plant and Materials under sub-paragraph (b) above;

- (d) the currencies for such additions and deductions shall be determined by the Employer's Representative for such Plant and Materials under sub-paragraph (b) above; and
- (e) the currencies for such additions and deductions shall be determined by the Employers Representative as described in Sub-Clause 13.5."

**Sub-Clause 13.9
Payment of
Retention
Money**

(ADB-R) Add the following para. to Sub-Clause 13.9:

"At the request on the Contractor, the second half of the Retention Money may also be released at the issue of the Taking-Over Certificate provided a bank guarantee is provided by the Contractor for an amount equal to half the Retention Money for the period from the issue of the Taking-Over Certificate to the expiry of the Contract Period."

**Sub-Clause 13.15
Calculation of
Payments in
Foreign Currency**

(ADB-R) Delete Clause 13.15 and add the following:

"The Contract shall be paid in the currencies stated in the Appendix to Bid.

The foreign and local currency portions of the balance of the Contract Price shall be amended by agreement between the Employer and the Contractor to reflect any substantial changes in the expected foreign and local currency requirements of the Contractor during the execution of the Works, provided that:

- (a) the Contractor shall inform the Employer and the Employer's Representative whenever any such substantial change may occur; or
- (b) the Employer's Representative may recommend a review of such expected requirements if in its judgment there is evidence of a change in the country of origin of equipment, materials, plants, or services to be provided under the Contract which should result in any substantial change of such expected requirements.

Any such amendment shall be affected by comparing the amounts quoted in the bid with the amounts already used in the Works and the Contractor's future needs for imported items."

When price adjustment provisions are to be included add the following Sub-Clause 13.17.

**Sub-Clause 13.17
Adjustment for
Changes in Cost**

(ADB-R) (*) "The amount payable to the Contractor and valued at base prices in accordance with the payment Schedule shall be adjusted for rises or falls in the cost of Labour, Contractor's

Equipment, Plant, Materials and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other clauses in the Contract, the Contract Price shall be determined to include amounts to cover the contingency of such other rise or fall in costs.

The amount to be added to or deducted from the Interim Payment Certificates for changes in cost and legislation shall be determined from formulae for each of the currencies in which the Contract Price is payable and for each of the sections of work priced in the said Schedule. The formulae will be of the following general type:

$$P_n = a + b \frac{L_n}{L_o} + c \frac{M_n}{M_o} + d \frac{E_n}{E_o} + \text{etc}$$

where:

"P_n" is the adjustment factor to be applied to the estimated value of the work carried out in month "n".

"a" is a fixed coefficient, specified in the Appendix to Tender, representing the non-adjustment portion in contractual payments;

"b", "c", "d", etc are coefficients representing the estimated proportion of each cost element (labour, materials, etc) in the Works, as specified in the Appendix to Bid;

"L_n", "M_n", "E_n", etc are the current cost indices or reference prices for the month "n", determined in the relevant currency of payment, applicable to each cost element on the date 49 days prior to the last day of period to which the particular Interim Payment Certificate is related; and

"L_o", "M_o", "E_o", are base cost indices or reference prices corresponding to the above cost elements, in the relevant currency of payment, on the Base Date.

The cost indices or reference prices specified in the Appendix to Tender shall be used. In cases where the Currency of Index is not the relevant currency of payment, the index shall be converted into the relevant currency of payment at the selling rate established by the Central Bank of the Country. If at any time a current index (for the date 49 days prior to the last day of the period to which the particular Interim Payment Certificate is related) is unavailable, a provisional index as determined by the Employer's representative shall be used, subject to subsequent correction of the amounts certified when the current index is available.

If the Contractor fails to complete the Works within the Time for Completion, adjustments of prices thereafter shall be made using either each index or price applicable on the date 49 days prior to the expiry of the Time for Completion, or the current index or price, whichever is more favourable to the Employer; provided that, if an extension of time is granted in accordance with Sub-Clause 8.3, the above provision shall apply to the extended time for completion.

The weightings (coefficients) for each of the factors of cost given in the Appendix to Bid shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations."

In order to clarify the taxation responsibilities of the Contractor include the following Sub-Clause 13.18.

**Sub-Clause 13.18
Taxation**

(ADB-R) (i) The prices bid by the Contractor shall include all taxes, duties and other charges imposed outside the Employer's country on the production, manufacture, sale and transport of the Contractor's equipment, Plant, materials and supplies to be used on or furnished under the Contract, and on the services performance under the Contract.

(ii) The prices bid by the Contractor shall include all customs duties, import duties, business taxes, income and other taxes that may be levied in accordance to the laws and regulations in being as of the date 28 days prior to the closing date for submission of bids in the Employer's country on the Contractor's Equipment, Plant, materials and supplies (permanent, temporary and consumable) acquired for the purpose of the Contract and on the services performed under the Contract. Nothing in the Contract shall relieve the Contractor from its responsibility to pay any tax that may be levied in the Employer's country on profits made by it in respect of the Contract."

**Sub-Clause 15.5
Corrupt or
Fraudulent
Practices**

(ADB-R) Delete the existing Sub-Clause 15.5 and substitute the following:

"If in the judgment of the Employer the Contractor has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract, then the Employer may, after having given 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel the Contractor from the Site, and the provisions of Clause 15 shall apply as if such expulsion had been made under Sub-Clause 15.2."

**Sub-Clause 17.3
Employer's
Risks**(ADB-R)
(*)

This sub-clause is amended to read as follows:

"The Employer's risks are:

- (a) insofar as they directly affect the execution of the Works in the country where the Permanent Works are to be executed:
 - (i) war and hostilities (whether war be declared or not), invasion, act of foreign enemies;
 - (ii) rebellion, revolution, insurrection, or military or usurped power, or civil war;
 - (iii) ionizing radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 - (iv) pressure waves caused by aircraft or other aerial devised travelling at sonic or supersonic speeds;
 - (v) riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of its Subcontractors and arising from the conduct of the Works;
- (b) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract;
- (c) any operation of the forces of nature (insofar as it occurs on the Site) which an experience contractor:
 - (i) could not have reasonably foreseen, or
 - (ii) could reasonably have foreseen, but against which he could not reasonably have taken appropriate measures to prevent loss or damage to physical property occurring."

If the Contractor is to occupy the Employer's facilities temporarily add the following Sub-Clause 17.7.

**Sub-Clause 17.7
Occupation and
Care of
Employer's
Facilities**

(F-O) "The Contractor occupying the Employer's facilities temporarily for the purpose of the Contract shall take full responsibility, from the dates of use or occupation to the dates of hand-over or cessation of occupation, of the items detailed below:

(insert details)

If any loss or damage happens to any of the above items while the Contractor is responsible for their care, arising from any cause whatsoever other than the Employer's Risks listed in Sub-clause 17.3, the Contractor shall at its own cost, rectify such loss or damage to the satisfaction of the Employer's representative."

**Sub-Clause 18.2
Insurance for
Works and
Contractor's
Equipment**

(ADB-R) (i) Amend the second sentence of the first and
(*) second paragraphs to read:

"This insurance shall cover loss or damage from any cause other than the Employer's risks listed in amended Sub-Clause 17.3 paras. (a)(i) to (iv) in Part II of the Conditions of Contracts".

(ii) Amend the fourth sentence of the first paragraph to read:

"Such insurance shall cover the Employer and the Contractor from the first working day after the Commencement Date until the date of issue of the Taking-Over Certificate for the Works."

In certain circumstances, the Employer may decide not to insist on insurance for design under Sub-Clause 18.1 and/or to arrange insurance in respect of the Works and Third Party liability itself. In such a case Sub-Clause 18.2, 18.3 and 18.5 shall be modified as shown below.

**Sub-Clause 18.2
Works Insurance
by the Employer**

(F-R) Delete the original text of Sub-Clause 18.2 and substitute:

"The Employer shall insure the Construction Documents, Plant, Materials and Works in the joint names of the Employer, the Contractor and the Subcontractors, against all loss or damage arising from any insurable cause other than the Employer's Risks listed in the amended Sub-Clause 17.3 paras (a)(i) to (iv) in Part II of the Conditions of Contract. Such insurance shall be for a limit of not less than the full replacement cost (including profit) and shall also cover the costs of demolition and removal of debris. Such

insurance shall be in such a manner that the Employer and the Contractor are covered from the first working day after the Commencement Date until the date of issue of the Taking-Over Certificate for the Works. The Employer shall extend such insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate and for loss or damage occasioned by the Contractor or Subcontractors in the course of any other operation (including those under Clauses 11 and 12).

The Contractor shall insure the Contractor's Equipment in the joint names of the Employer, the Contractor and Subcontractors, against all loss or damage arising from any insurable cause other than the Employer's risk listed in the amended Sub-Clause 17.3 paras. (a)(i) to (iv) in Part II of the Conditions of Contract. Such insurance shall be for a limit of not less than the full replacement value (including delivery to Site). Such insurance shall be in such a manner that each item of equipment is insured while it is being transported to the Site and throughout the period it is on or near the Site."

**Sub-Clause 18.3
Third party
Insurance by
Employer**

(F-O)

Delete the original text of Sub-Clause 18.3 and substitute:

"The Employer shall insure against liability to third parties, in the joint names of the Employer, the Contractor and Subcontractors, for any, loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2) or to any person (except persons insured under Sub-Clause 18.4), which may arise out of the performance of the Contract and occurring before the issue of the Performance Certificate".

**Sub-Clause 18.5
General
Requirements
for Insurance**

(F-O)

Delete the original text of Sub-Clause 18.5 and substitute:

"Each insurance policy shall be consistent with the general terms agreed in writing prior to the Effective Date, and such agreement shall take precedence over the provisions of this Clause.

The Contractor shall, within the period stated in the Appendix to Bid or the Appendix to Technical Proposal in the case of two-envelope bidding procedure (calculated from the Commencement Date), submit to the Employer appropriate evidence that the insurances for which the Contractor is responsible have been effected. When each premium has been paid, the Contractor shall submit copy receipts to the Employer. The Contractor shall effect all insurances for which the Contractor is responsible with insurers and in terms approved by the Employer. Each policy insuring against loss or damaged shall provide for payments to be made in the currencies required to rectify such loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The Contractor (and, if appropriate, the Employer) shall comply with the conditions stipulated in each of the insurance policies.

The Employer shall, within 14 days, after receiving the performance security described in Sub-Clause 4.2, submit to the Contractor evidence that the insurances for which the Employer is responsible, have been effected, and copies for the relevant policies of insurance. When each premium has been paid, the Employer shall submit copy receipts to the Contractor.

The Employer shall effect all insurances for which the Employer is responsible with insurers, and in the terms, approved solely by the Employer. All such insurances shall be in accordance with the details of insurance annexed unless otherwise agreed with the Contractor. The Contractor shall be deemed to have fully understood such details, and to have satisfied itself before submitting its Tender as to the extent of the cover provided under such insurances (taking account of the conditions, limits, exceptions and deductibles) and as to the correctness and sufficiency of the Contract Price, which shall be deemed to include the cost of any further insurances which the Contractor wishes to effect. The Contractor and Subcontractors shall accept the insurances effected by the Employer, as if they had effected such insurance; they and the Employer shall comply with the terms and conditions stipulated in each such policy. Payment received under a policy insuring against loss or damage shall be used for the rectification of the loss or damage.

Each party shall make no material alteration to the terms of any insurance for which it is responsible, without the prior agreement of the other party. If an insurer makes (or purports to make) any such alteration, the party notified by such insurer shall notify the other party immediately.

If either party fails to effect and keep in force any of the insurances which it is required to effect under the Contract, or fails to provide satisfactory evidence, policies and receipts in accordance with this Sub-Clause, the other party may, without prejudice to any other right or remedy, effect insurance for the coverage relevant to such default, and pay the premiums due. Such payment shall be recoverable from the party responsible for effecting such insurance.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers (including the cost of preparing insurance claims) shall be borne by the Contractor and/or the Employer accordingly."

Section 4

Employer's Requirements

Section 4. Employer's Requirements

The project consists of the followings works:

1. the rehabilitation of 5 bridges: (4 bridges are 2 x 6m span; 1 bridge is 1 x 6m span),
2. rehabilitation of the ballast quarry near the station of Djil Aryk,
3. construction of a new avalanche shed for a total length of about 500 m and slope stabilisation over the existing avalanche shed between Djil Arik and R148 block post.

1. BRIDGES REHABILITATION

Purpose of the activity is to the rehabilitate 5 bridges located by the Kyrgyz Railways:

- 1 at km 3694+10,
- 2 at km 3708+5,
- 3 at km 3765+6,
- 4 crossing Konda river,
- 5 crossing a channel near station Djil Aryk.

Four bridges are 2X6m span and only one is 1X6m span.

Activities to be carried out, which must take into account the Standards in force, are the following:

Beams replacement

Methodology for beam substitution should decided by the Contractor under his responsibility. Here below the methodology commonly used in CIS is shortly described. Drawing L4.1-1 describes the methodology for substitution of beams of a three spans bridge.

In such case the operation considers two stages:

- o I stage – replacement of the first two spans
- o II stage – replacement of the third span

For bridges of two spans or less the operation should be limited to the first stage.

Works to be carried out requires a special standard train made of two diesel loco at the ends, a platform wagon for beams, a crane (EDK-1000) including a platform wagon for the boom on rest/transport, a gondola wagon for ballast.

Stage I

Works to be carried out requires a windows of 8 hour and 20 minutes:

- 1 Closure of the line and work train leaving the station full loaded;
- 2 The train reaches the bridge;
- 3 The crane boom is freed and the train is divided into two parts positioned each one on the two different approaches to the bridge;

- 4 Ballast, sleepers and rails are removed from the two spans to be substituted near to the crane;
- 5 The crane removes the old beams from the nearest span, put them on the temporary site aside, replace the old beams with the new-ones;
- 6 The crane performs the same operation for the central span;
- 7 Ballast, sleepers and rails are replaced;
- 8 Old frames are collected and loaded on the train;
- 9 Loco N° 2 push platform for crane boom and gondola to form again an unique train;
- 10 Crane boom is fixed in the rest/transport position;
- 11 The train reaches a station;
- 12 Line is open to the traffic.

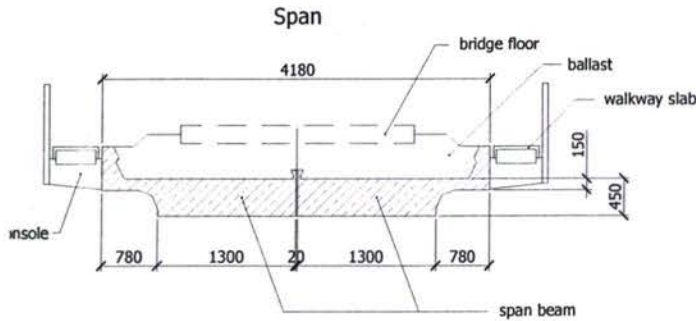
Stage II

Works to be carried out requires a windows of 5 hour and 30 minutes, operations are basically the same but only beams of one span are substituted. This stage is evidently not necessary for bridges of two spans or less.

The substitution of the beams should be operated before welding the rails in long bars.

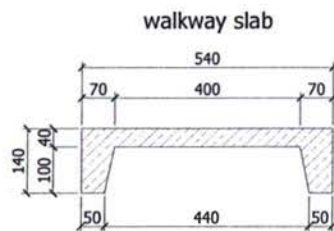
Provision of beams

Provision of beams and relevant devices are included. All of them has to comply with the standard design of Lengiprotransmost No 557, 1969 (see the following figure)



The basic parameters on one span

overall length	effective span Lp, m	Building height from a sole of a rail up to pad stone m	Mark of concrete	Volume of concrete, m ³			Weight of armature, ton			Weight of one block with isolation, ton
				of the beams	Of the walkway slab	Total	A I	A II	Total	
6.0	5.4	1.02	V-25	9.7	0.4	10.3	0.57	1.59	2.16	14.1



The basic parameters on one walkway slab

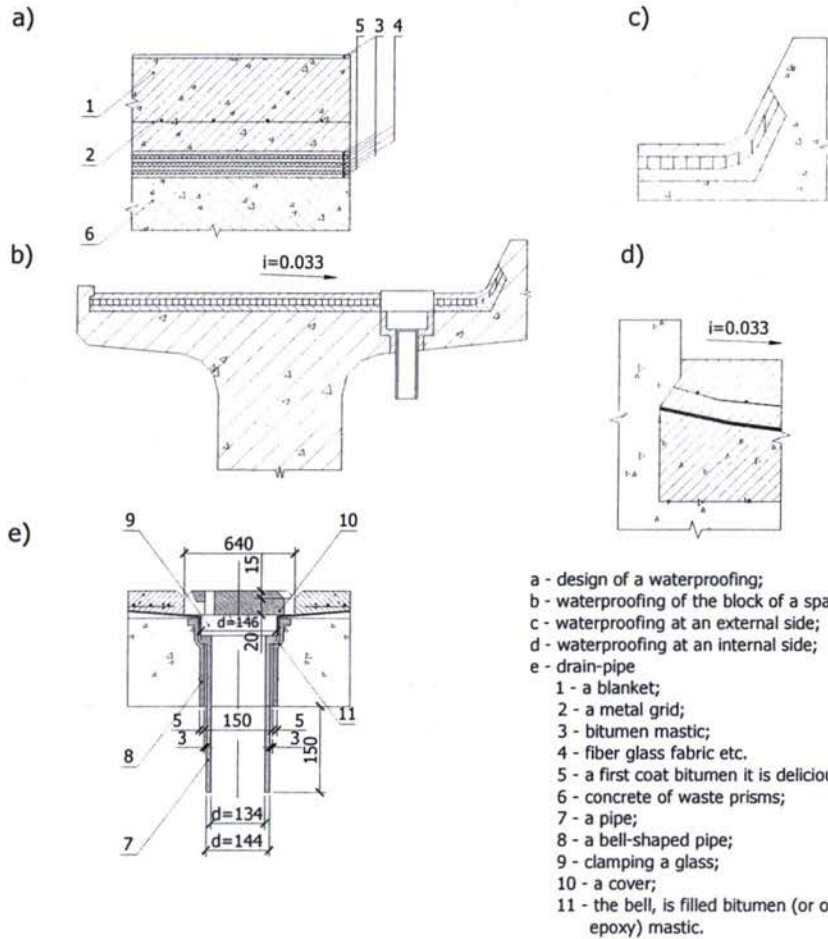
Mark of element	The basic sizes of elements, cm	Concrete			Armature steel	
		Mark of concrete	Volume of concrete, m ³	Weight ton	Class of the armature A I, kg	Class of the armature A II, kg
P-2	173 x 54 x 15	V-25	0.058	0.145	8.5	3.0
P-5	208 x 54 x 15	V-25	0.07	0.175	10	3.7

Waterproofing of ballast plates.

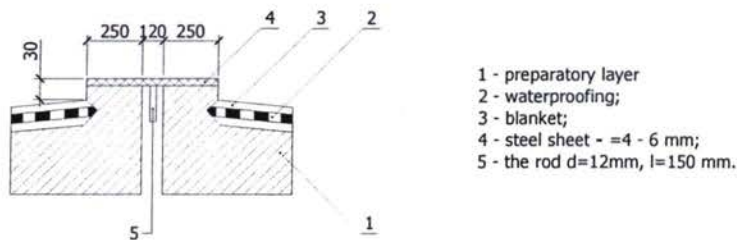
Life time of reinforced concrete bridge superstructures in a great extent depends on waterproofing condition and fast water diversion from ballast plate and other surfaces of bridge superstructures.

Structure of surface waterproofing consists of preparatory isolating and protective layers(see the following figures).

Details of a waterproofing
(the sizes in mm)



Overlapping of deformation seams

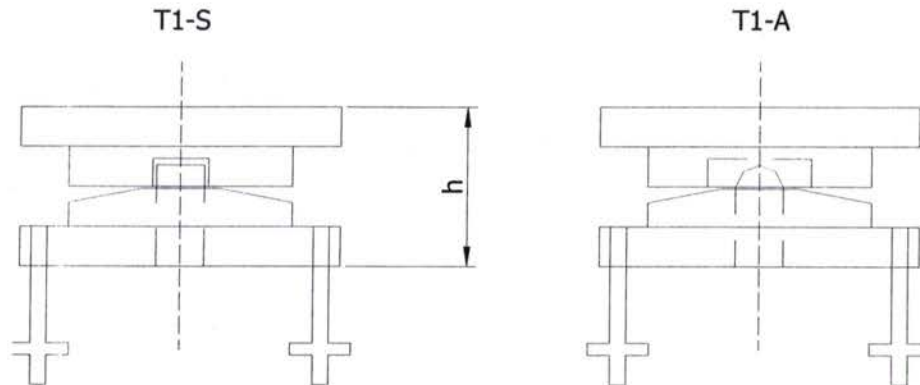


Bearings

During replacement of the bridge superstructures the replacement of defective bearings is envisaged.

It is allowed to install the reinforced concrete bridge superstructures with the length of 6 m on welded tangential bearings with the height of 20 cm (see the following figure)

Welded tangential carriages for slab span



The basic parameters on one span

Height of the carriage mm	End reaction to the one carriage ton	Design movement mm	Sizes of the bottom bearing sheet		Distance between anchors along an axis of the bridge	Weight of one bearing sheet kg		Quantity of bearings on the span Lump of bearings on the span
			Along an axis of the bridge	Across an axis of the bridge		actuated bearing	stationary bearing	
200	109	25	430	310	300	164	8	1316

Repair of bridge piers

According to survey data reinforced concrete bridge structures have the following damages: cracks in the concrete, corrosion of armoring, leaching of concrete, separation of protective layer.

The following works are envisaged: cleaning from dust, dirt, leaching of concrete with rehabilitation of protective layer, trimming of cracks up to 0.15 mm with "polymer compound", injection of cracks more than 0.15 mm with epoxy resin, improvement of waterproofing and water diversion defects on bridge superstructures is carried out from overhead rail package with the length of 5 m.

Overhaul works of piers are carried out from outside scaffoldings

Repair of abutment

Works implemented into "window" include:

- Cutting out of defective layer with the thickness of 4 cm on bearing blocks;
- Sealing up of chips with the monolithic concrete B 25;
- Dismantling of reinforced concrete laying, destroyed cordon stones;
- Installation of new reinforced concrete bearing blocks PB-1, PB-2
- Installation of new cordon blocks CB-1 and cabinet type blocks

The works implemented "under the train traffic conditions":

- Sealing up of chips with the thickness of 2 cm in reinforced concrete bearing blocks;
- Cement floating of abutment surface;
- Protective layer rehabilitation with cement;
- Sealing up the cracks

Labor protection and safety engineering

The works for rehabilitation and repair of the bridges are carried out on railway line operated sites, where regular traffic is available.

Civil works under line operation conditions should be carried out with provision of train traffic safety and full safety of employees working along the line, as well as without traffic delay.

When working along the line with traffic continuity work site should be protected with the signals according to instructions for safety of train traffic as well as safety engineering rules.

When working into "window" on operated lines with traffic interruption closing of span is carried out after permission of line master. If such closing will not cause the change of traffic volume and arrival and departure time to neighbouring stations it may be permitted by the line master.

The project took into account the requirements for safety engineering stipulated by the normative documents:

- ShNK 3.01.03-03 – "Civil works arrangement"
- KMK 3.01.02-00 – "Safety engineering during civil works"
- KMK 3.06.07-98 – "Bridges and pipes. Survey and test rules"

2. BALLAST QUARRY

Purpose of the activity is to rehabilitate the ballast quarry owned by the Kyrgyz Railways and located in the nearest of the station of Djil Aryk.

The quarry has conveyer rubber belts on straight rollers transport the material from one breaker to the other. Between the two breakers a screening station, with rotary screens, selects and separates the different materials. The coarser portion of the material (ballast) is transported to the stocking area through the conveyer belts, while the remaining portion is conveyed to the gyratory breaker for the secondary crushing. Again a screening station downstream of the gyratory breaker selects and divides the sub ballast material from the finer material (sand and grit). The sub ballast are then conveyed to separate stock areas.(see the following picture).



The existing crushing plant is basically composed of a jaw breaker for the primary crushing of the quarried rock to obtain ballast material and of a gyratory breaker for the secondary crushing, to obtain sub ballast material. The crushing plant seems to be under utilized (250 m³ possible daily production against only 12000 m³ of yearly production for track maintenance).

A first assessment of the condition of the crushing plant brings to the conclusion that the components of the plant mostly subjected to wearing are:

- the shell that covers the jaws of the jaw breaker and the internal elements of the giratory breaker (hammers and internal shells);
- the conveyers rubber belts
- the straight rollers, mainly those adjacent and below the screening and crushing stations;
- the metallic net of the screening system;
- the ball bearing of the engines (crushing and screening system);
- all the electrical apparatuses (electric panel and cables);
- wells and washing system (if existent).

All such elements should be substituted.

The Contractor will submit to the approval of the Employer, before starting the implementation, a detailed description of the necessity of maintenance and provision of spare parts for the whole quarry aiming at the production of 75.000 m³ per year.

The Contractor can start activities only after Employer approval. It has to be reminded that provision of loaders has been considered in Lot 3.1 and should not be part of the present contract.

3. AVALANCHE SHED

Purpose of the activity is:

- to complete the structure of the avalanche shed;
- to stabilise the slope over the existing avalanche shed.

Both avalanche sheds are located or to be located between Djil Aryk and R148 block post.

New avalanche shed

The first intervention refers to a structure which has been partially constructed. Works were stopped for shortage of funds.

In such case Lot 3.4 considers the completion of the shed for an additional length of about 500 meters.

Employer's requirement is to prepare a design of the new structures according to the drawing L3.4-2:

- pilaster foundations should be connected each other by a reinforced concrete longitudinal beams;
- pilasters should be linked at the top with longitudinal beams and transversal roofing beams;
- transversal roofing beams should be linked with the retaining wall.

Details of the connections are part of the design to be prepared by the Contractor as well as standards elaboration and drawings (i.e. reinforcement details, joint/connection details, geological/geotechnical studies including test, etc).

After the approval from the Employer, the Contractor will start the implementation.

Additionally to that, the Contractor has to:

- perform an accurate inspection of the critical area in order to identify the most unstable rock blocks and then proceeding to their controlled removal.
- clean up of the slopes,
- design and install rock fall protection systems in the most endangered sections of the area (like drapery wire mesh or rock-fall protection barrier).

Existing avalanche shed

In such case the situation is considered critical and measures are needed in order to limit the future development of the landslide.

These measures should include (but not limited) the following works:

- remodelling of the slope shape, by reducing the soil load at the head and possibly enlarging it at the toe of the landslide,
- surface drainage of the slide area by means of drainage ditches of adequate dimensions and gradient of discharge rain water,

- subsurface drainage with the use of subsurface drainage borings.

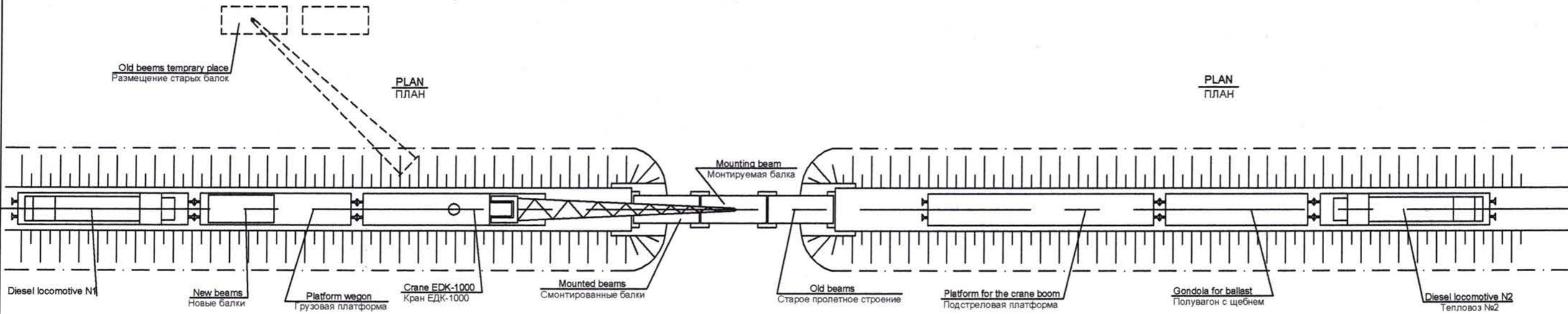
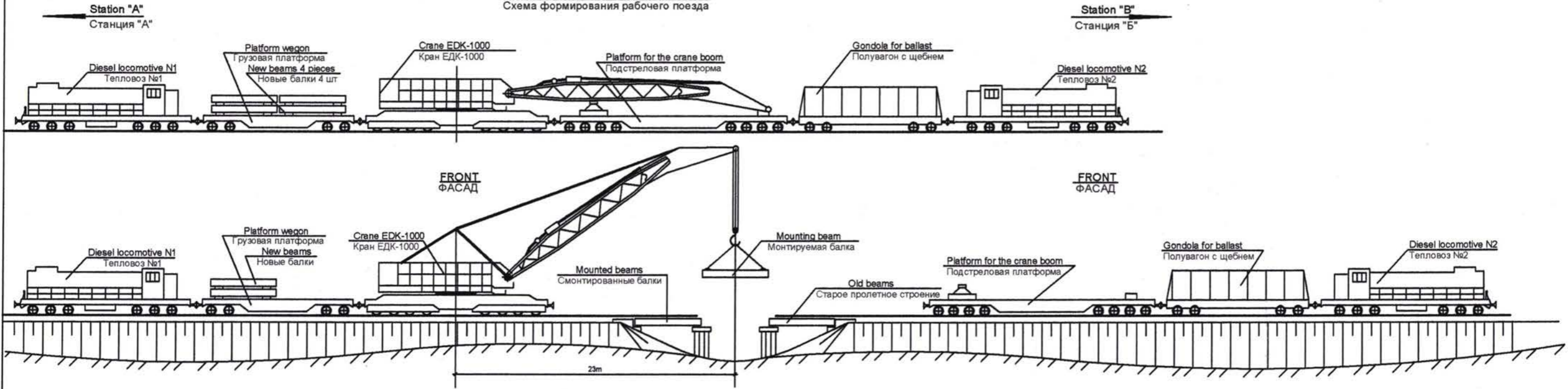
Such measure should be carefully developed after slope stability analysis based on a number of physical and geotechnical parameters to be obtained from the following studies:

- survey of a detailed contours map of the slide and surrounding area, at least in scale 1:2000,
- engineering geological mapping of the same area, based on the said topographical map,
- at least four or five borings for soil sampling and ground water observation including test of Standard Penetration Test during the performing of borings, properly located and dimensioned according to the results of the above surveys,
- laboratory analyses of samples obtained from borings, including the following tests, when applicable:
 - description of sample (petrographical and geotechnical)
 - moisture content
 - unit weight
 - dry and submerged densities
 - maximum and minimum dry density
 - specific gravity
 - particle size analysis
 - Attemberg limits
 - strength and compressibility test.

A plan of intervention will be defined on the basis of those comprehensive and accurate investigations to be carried out in the area. The plan will be submit to the employer approval before the implementation.

REPLACEMENT OF THE BEAMS ON THE ONE LINE
ЗАМЕНА ПРОЛЕТНОГО СТРОЕНИЯ НА ОДНОМ ПУТИ

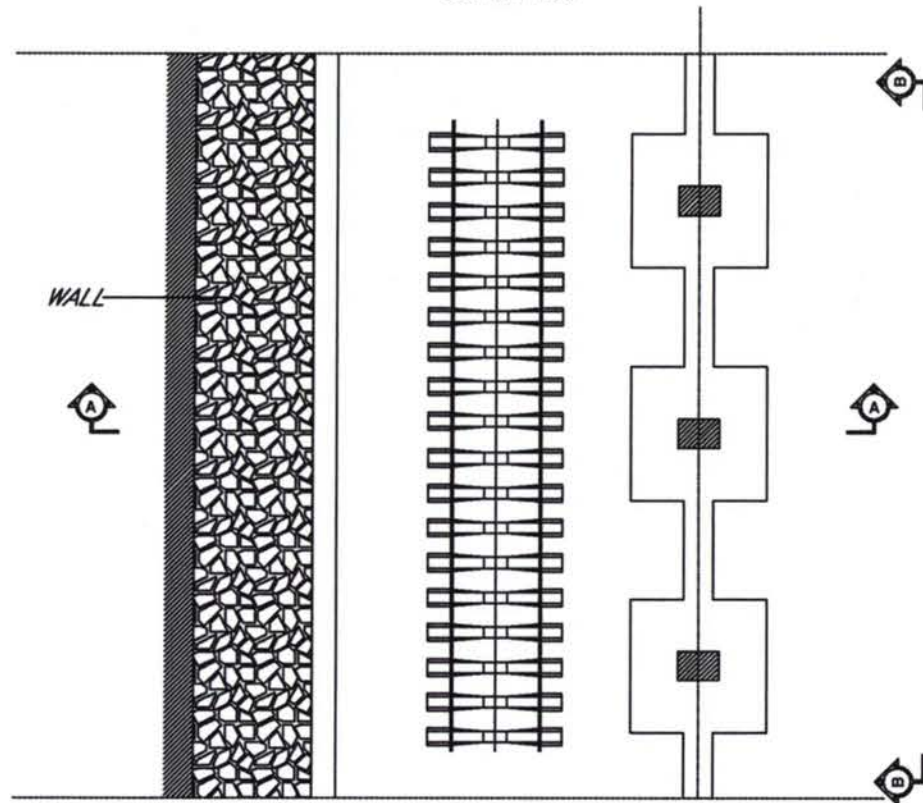
Scheme of the working train
Схема формирования рабочего поезда



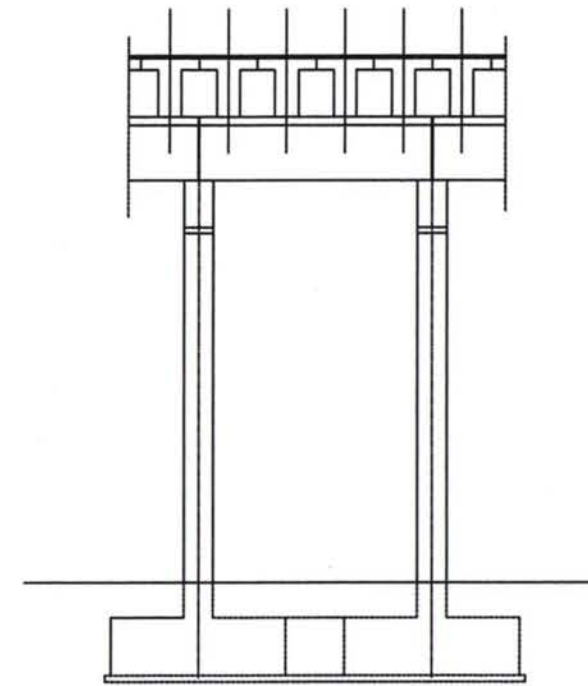
		Review of Railways Rehabilitation in Central Asia - Module B (Phase2) (EUROPEAID/116151/KC/IS/MULTI)		A project implemented by 	
Metodology for beam replacement Метод замены пролетного строения					
					L3.4-1
Scale:					
Rev.	Description	Designed	Date	Verified	Approved
File: Referred Tables					

NEW AVALANCHE SHED

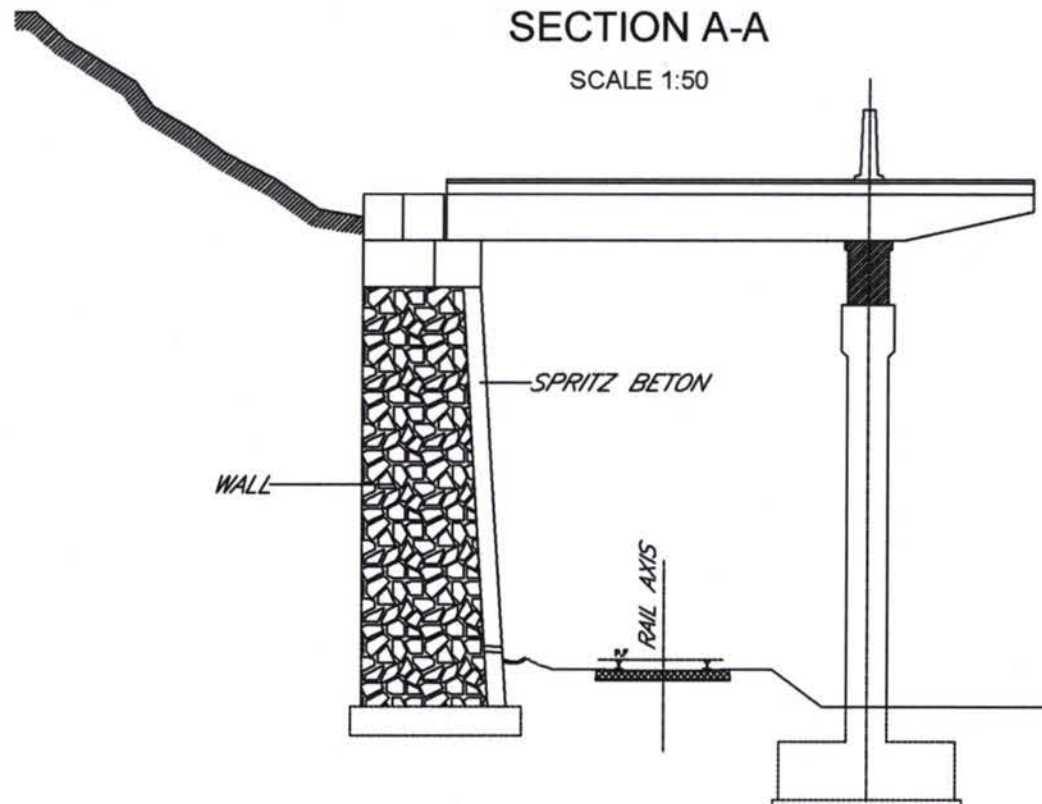
PLAN
SCALE 1:50



SECTION B-B
SCALE 1:50



SECTION A-A
SCALE 1:50



		Review of Railways Rehabilitation in Central Asia - Module B (EUROPEAID/116151/C/SV/MULTI)				A project implemented by: 			
EXISTING AND NEW AVALANCHE SHED									
PLAN AND SECTIONS								L3.4-2/2	
[] [] [] [] [] [] [] [] [] []									
Rev.	Description	Designed	Date	Verified	Date	Approved	Date	Authorized	Scale:
File: Referred Tables									

Section 5

Form of Bid and Appendix to Bid

Single Stage Bidding Procedure

Section 5. Form of Bid and Appendix to Bid

Notes on Preparing Forms of Bid and Appendix to Bid

The Bidder shall complete and submit the Form of Bid and Appendix to Bid all in accordance with the requirements of the bidding documents.

Form of Bid

Name of Contract: _____
 To: _____ (Insert name of Employer)
 _____ (Insert address of Employer)

Gentlemen:

We have examined the Conditions of Contract, Employer's Requirements, Schedules, Addenda Nos _____ and the matters set out in the Appendix hereto. We have understood and checked these documents and have not found any errors in them. We accordingly offer to design, execute and complete the said Works and remedy any defects fit for purpose in conformity with these documents and the enclosed Proposal, for the fixed lump sum of (in currencies of payment)

We accept your suggestions for the appointment of the Dispute Adjudication Board, as set out in Schedule ____ [We have completed the Schedule by adding our suggestions for the other member of this three-person Board, but these suggestions are not conditions of this Bid].*

We agree to abide by this Bid until _____ and it shall remain binding upon us and may be accepted at anytime before that date. We acknowledge that the Appendix forms part of our Bid.

If our Bid is accepted, we will provide the specified performance security, commence the Works as soon as reasonably possible after receiving the Employer's Representative's notice to commence, and complete the Works in accordance with the above-named documents within the time stated in the Appendix to Bid.

Unless and until a formal Agreement is prepared and executed this Bid, together with your written acceptance thereof, shall constitute a binding contract between us.

We understand that you are not bound to accept the lowest or any bid you may receive.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

Name and Address of Agent	Amount and Currency	Purpose of Commission or Gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

(if none, state "none").

* If the Bidder does not accept, this paragraph may be deleted and replaced by:

We do not accept your suggestions for the appointment of the Dispute Adjudication Board, and propose that we jointly agree upon the appointment after the Effective Date (unless previously agreed) in accordance with Sub-Clause 20.3 of the Conditions of Contract. [OPTIONAL: Our Proposal includes our suggestions for this appointment, but these suggestions are not conditions of this Bid.]

We are, Gentlemen
Yours faithfully

Signature _____ in the capacity of _____ duly authorized to sign bids for
and on behalf of _____

Address

Date _____

Appendix to Bid

[Note: with the exception of the items for which the Employer's requirements have been inserted, the following information must be completed before the Bid is submitted]

	Sub-Clause	
Employer's name and address _____	1.1.2.1 & 1.8*	<u>(Insert before issue of document)</u> _____
Contractor's name and address _____	1.1.2.2 & 1.8	_____ _____
Name and address of the Employer's Representative _____ _____ _____	1.1.2.2 & 1.8	_____ _____
Time for notice to commence _____	8.1	_____ days
Time for Completion of the Works _____	1.1.3.4	_____ days
<i>If Sub-Clause 13.15 does not apply:</i>		
Foreign Currency/Currencies _____	1.1.5.3	as named in the BID
Electronic transmission systems _____	1.8	_____
Confidential details _____	1.12	<u>(List applicable confidential details)</u>
Time for access to the Site _____	2.2	_____ days after the Commence- ment Date
Amount of performance security _____	4.2*	Ten (10%) of the Contract Price and in the proportions of currencies which the Contract Price is payable
Time for submission of programme _____	4.14	_____ days after the Effective Date
Normal working hours _____	6.5	_____
Liquidated damages for the Works _____	8.6*	_____ % of the Contract Price per day, in the proportions of currencies in which the Contract Price is payable
Limit of liquidated damages for delay _____	8.6	_____ % of the Contract Price

If Clause 11 applies

Liquidated damages for failing Tests after Completion 11.4

(details of test failure) _____

(details of test failure) _____

Total amount of advance payments 13.2*

Ten to twenty (10-20)% of the Contract Price

Number and timing of installments 13.2

Start repayment of advance payment 13.2(a)

when payments are _____% of the Contract Price

Repayment amortization of advance payment _____ 13.2(b)

_____ 25%

Percentage of retention _____ 13.3(c)*

Ten (10)%

Limit of Retention Money 13.3(c)*

Five (5)% of the Contract Price

If Sub-Clause 13.5 applies:

Plant and Materials for payment When delivered to the Site 13.5

_____ [list]

Minimum amount of Interim Payment Certificates _____ 13.6*

One and one-half (1.5)% of the Contract Price

If Sub-Clause 13.15 applies:

Payments in Local and Foreign Currencies 1.1.5.3 & 13.15

Currency Unit	Amount Payable in such Currency
Local: _____ [name]	_____
Foreign: _____ [name]	_____
_____ [name]	_____

If there are Provisional Sums: 14.5(b)(ii)

Percentage for Adjustment of Provisional Sums _____

Amount of insurance for design 18.1

Amount of third party insurance 18.3

Periods for submission of insurance:	18.5	
(a) evidence of insurance ____	*	<u>Not later than commencement date.</u>
(b) relevant policies _____	*	<u>Fourteen (14) days after commencement date.</u>
Number of members of Dispute Adjudication Board	20.3*	<u>Three (3) _____</u>
Member of Dispute Adjudication Board (if not agreed) to be nominated by _____	20.3*	The President of the Institution Engineers of country where works carried out.
Arbitration rules _____	20.6*	<u>International Chamber of Commerce</u>
Number of Arbitrators _____	20.6*	<u>Three (3) _____</u>
Language of arbitration _____	20.6*	<u>English _____</u>
Place of arbitration _____	20.6	_____ _____

If there are Sections

Definitions of Sections

Description (Sub-Clause 1.1.6.9)	Value (percentage of Contract Price) +	Time for Completion (Sub-Clause 1.1.3.4)	Liquidated Damages (Sub-Clause 8.6)
_____	_____	_____	_____
_____	_____	_____	_____

* Indicates insertion recommended by ADB.

+ These percentage shall also be applied to the first half of the Retention Money under Sub-Clause 13.9

Initials of signatory of Bid _____

Section 6

Sample Forms

Section 6. Sample Forms

Notes on Sample Forms

Bidders shall complete and provide the Bid Security all in accordance with the requirements of the bidding documents.

Bidders should not complete the Form of Agreement at this time. Only the successful Bidder will be required to complete the Form. The Form of Agreement, when it is finalized at time of contract award, should incorporate any corrections or modifications to the accepted bid resulting from arithmetic corrections, acceptable deviations (time for completion, technical deviations, commercial deviations, etc.), spare parts or quantity variations in accordance with the requirements of the bidding documents.

The Form of Performance Security, Form of Advance Payment Security and Form of Domestic Preference Security should not be completed by the bidders at the time of bid preparation. Only the successful Bidder will be required to provide these securities in accordance with the forms indicated herein or in another form acceptable to the Employer. When Advance Payment Security and or Domestic Preference Security is not required, the form(s) should not be included in the bidding documents.

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Form of Performance Security	183
Form of Advance Payment Security	184
Form of Domestic Preference Security	185

Form of Bid Security (Bank Guarantee)

WHEREAS, _____ [Name of Bidder] (hereinafter called "the Bidder") has submitted his bid dated _____ [Date] for the construction of _____ [Name of Contract] (hereinafter called "the Bid").

KNOW ALL MEN by these presents that We _____ [Name of Bank] of _____ [Name of Country] having our registered office at _____ (hereinafter called "the Bank") are bound unto _____ [Name of Employer] (hereinafter called "the Employer") in the sum of _____³³ for which payment well and truly to be made to the said Employer the Bank binds himself, his successors and assigns by these presents.

SEALED with the Common Seal of the said Bank this ___ day of _____ 20__.

THE CONDITIONS of this obligation are:

- (1) If the bidder withdraws his Bid during the period of bid validity specified in the Form of Bid:
- or
- (2) If the Bidder refuses to accept the correction of errors in his Bid;
- or
- (3) if the Bidder, having been notified of the acceptance of his Bid by the Employer during the period of Bid validity;
 - (a) fails or refuses to execute the Form of Contract Agreement in accordance with the Instructions to Bidders, if required; or
 - (b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Bidders;

we undertake to pay to the Employer up to the above amount upon receipt of its first written demand, without the Employer having to substantiate its demand, provided that in its demand the Employer will note that the amount claimed by it is due to it owing to the occurrence of one or all of the three conditions, specifying the occurred condition or conditions.

³³ The bidder should insert the amount of the guarantee in words and figures denominated in the currency of the Employer's country or an equivalent amount in a freely convertible currency. This figure should be the same as shown in Clause 18.1 of the Instructions to Bidder.

This Guarantee will remain in force up to and including the date ____³⁴ days after the deadline for submission of bids as such deadline is stated in the Instructions to Bidders

or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

DATE _____ SIGNATURE OF THE BANK _____

WITNESS _____ SEAL _____

(Signature, Name, and Address)

³⁴ Usually 28 days after the end of the validity period of the Bid. Date should be inserted by the Employer before the bidding documents are issued.

Form of Contract Agreement

This Agreement made this ____ day of _____ 20 ____ between _____
of _____
(hereinafter called "the Employer") of the one part and _____
of _____ (hereinafter called "the Contractor") of
the other part

Whereas the Employer desires that the Works known as _____
should be designed and executed by the Contractor, and has accepted a Bid by the Contractor
for the design, execution and completion of such Works and the remedying of any defects
therein.

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - (a) The Letter of Acceptance dated _____
 - (b) The Employer's Requirements
 - (c) The Addenda nos. _____
 - (d) The Bid dated _____
 - (e) The Conditions of Contract (Parts I and II)
 - (f) The completed Schedules, and
 - (g) The Contractor's Proposal.
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to design, execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor, in consideration of the design, 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 the day and year first before written in accordance with their respective laws.

Authorized signature of Contractor
SEAL
(if any)

in the presence of:

Name _____

Signature _____

Address _____

Authorized signature of Contractor
SEAL
(if any)

in the presence of:

Name _____

Signature _____

Address _____

**Form of Performance Security
(Bank Guarantee)**

To: _____ [name of Employer]
_____ [name of Employer]

WHEREAS _____ [name and address of Contractor] (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. _____ dated _____ to execute _____ [name of Contract and brief description of Works] (hereinafter called "the Contract");

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

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

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of _____ [amount of Guarantee]³⁵ _____ [in words], such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____ [amount of Guarantee] as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

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

This guarantee shall be valid until the date of issue of the Performance Certificate.

Signature and Seal of the Guarantor _____
Name of Bank _____
Address _____
Date _____

³⁵ An amount is to be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract, and denominated either in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Employer.

**Form of Advance Payment Security
(Bank Guarantee)**

To: _____ *[name of Employer]*
 _____ *[address of Employer]*
 _____ *[name of Contract]*

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Sub-Clause 13.2 ("Advance Payment") of the above-mentioned Contract, _____ *[name and Address of Contractor]* (hereinafter called "the Contractor") shall deposit with _____ *[name of Employer]* a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of _____ *[amount of Guarantee]*³⁶ _____ *[in words]*.

We, the _____ *[bank or financial institution]*, as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to _____ *[name of Employer]* on its first demand without whatsoever right of objection on our part and without its first claim to the Contractor, in the amount not exceeding _____ *[amount of Guarantee]* _____ *[in words]*.

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

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until _____ *[name of Employer]* receives full repayment of the same amount from the Contractor.

Yours truly, _____
 Signature and Seal: _____
 Name of Bank/Financial Institution: _____
 Address: _____
 Date: _____

³⁶ An amount is to be inserted by the Bank or financial institution representing the amount of the Advance Payment, and denominated either in the currency(ies) of the Advance Payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

**Form of Domestic Preference Security
(Bank Guarantee)**

To: _____ *[name of Employer]*
_____ *[address of Employer]*

WHEREAS a joint venture among: _____
[name and addresses of all joint venture partners] (hereinafter called "the Contractor"), has undertaken in pursuance to Contract No. _____ dated _____ to execute _____ *[name of Contract and brief Description of Works]*, (hereinafter called "the Contract");

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligation stated in Sub-Clause 4.25 of the Conditions of Contract;

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

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of _____ *[amount of Guarantee]*³⁷, we undertake to pay you, upon your first written demand and without your having to substantiate such demand any sum within the limit of _____ *[amount of Guarantee]*.¹

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

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

This guarantee is valid until the date of the Performance Certificate.

Signature and Seal of the Guarantor _____
Name of Bank _____
Address _____
Date _____

³⁷ Amount to be inserted by the Guarantor in accordance with Sub-Clause 25 of the Conditions of Particular Applications.

Section 7

Schedules

Section 7. Schedules

Notes on Schedules

The Schedules are intended to provide the Employer with essential supplementary information in an organized format. Examples of more commonly used Schedules are given herein. Others may be devised and added in accordance with the requirements of the Instructions to Bidders.

All the Schedules are essential for bid evaluation and some in contract execution; they should all be incorporated in the Contract, and appropriate changes introduced with the approval of the Employer or its representative.

In Option A, Single Stage Bidding Procedure, all Schedules are to be completed and submitted with the bid.

In Option B, Two Envelope Bidding Procedure, the schedules are to be completed and submitted as part of the Technical Proposal and Price Proposal in accordance with the Instructions to Bidders (Option B) Clause 13, Documents Comprising the Bid.

1. *The Schedules are divided into six separate Schedules as follows:*
 - I. *Design, Drawings and Documentation*
 - II. *Plant and Equipment (including Mandatory Spare parts) Supplied from outside the Employer's Country*
 - III. *Plant and Equipment (including Mandatory Spare parts) Supplied from within the Employer's Country*
 - IV. *Civil Works, Installation and Other Services*
 - V. *Grand Summary*
 - VI. *Recommended Spare Parts*
2. *The quantities shown in these schedules are estimates only.*
3. *The Schedules do not generally give a full description of the plant and equipment to be supplied and the services to be performed under each item. Bidders shall be deemed to have read the Employer's Requirements and other sections of the bidding documents and reviewed the Drawings to ascertain the full scope of the requirements included in each item prior to filling in the rates and prices. The entered rates and prices shall be deemed to include for the full scope as aforesaid including overheads and profit.*
4. *Bid prices shall be quoted in the manner indicated and in the currencies specified in the Instructions to Bidders in the bidding documents.*

Section 7 – Schedules of Rates and Prices

Notes on Schedules (continued)

For each item, bidder shall complete each appropriate column in the respective Schedules, giving the price breakdown as indicated in the Schedules.

Prices given in the Schedules against each item shall be for the scope covered by that item as detailed in the Employer's Requirements, Drawings or elsewhere in the bidding documents.

5. Items left blank will be deemed to have been included in other items. The TOTAL for each Schedule and TOTAL of the Grand Summary shall be deemed to be the total price for executing the facilities and sections thereof in complete accordance with the Contract.

6. These schedules are intended primarily to provide information for bid evaluation but not intended to be used for the evaluation of work done for the purpose of interim payment. They may, however, be used as a reference for the adjustment of the Schedule of Payment should the need arise.

7. These schedules can be used as a basis to value variations of work done under the Provisional Sum.

**III. Plant & Equipment, including mandatory spare parts,
from within the Employer's Country**

Item	Description	Quantity	Ex-factory Price ^a	Sales Tax ^a	Total
	TOTAL (To Grand Summary)				

a Currencies shall be in accordance with Clause 16 of the Instructions to Bidders.

V. Grand Summary

Item	Description	Total Price	
		Foreign () ^a	Local () ^a
1	Schedule 1. Design, Drawings and Documentation		
2	Schedule 2. Plant and Equipment, including Mandatory spare parts, supplied from abroad		
3	Schedule 3. Plant and Equipment, including Mandatory spare parts, from within the Employer's Country		
4	Schedule 4. Civil Works, installation and other services		
	TOTAL (To Grand Summary)		

a Specify currency.

SCHEDULE OF PAYMENT

(a) If payment is on a periodic basis according to pre-estimated construction progress.

Payment	Month	Percent	Amount	Cumulative%	Milestone ¹
1 st Payment					
2 nd Payment					
3 rd Payment					
Final Payment					
Total					

¹ Where available and applicable.

Note: The Employer and the Contractor may make necessary adjustments to the payment schedule if the progress of work is substantially ahead of or behind the program referred to in Sub-Clause 4.14.

(b) If payment is based on completion by stages.

Stage (insert brief description)	Percent	Amount	Cumulative%
1 st			
2 nd			
3 rd			
Final			
Total			

**SCHEDULE OF COEFFICIENT AND INDICES
FOR PRICE ADJUSTMENT**

Coefficient Scope of Index	Country of Origin; Currency of Index	Source of Index; Title/Definition	Value on stated dates	
			Value	Date
a = _____				
b = _____				
c = _____				
d = _____				
e = _____				

**SCHEDULE OF
MAJOR ITEMS OF CONSTRUCTIONAL PLANT**

Description (Type, Model, Make)	No. of Each	Year of Manufacture	New or Used	Owned (O) Or Leased (L)	CIF Value	Est. Power Rating	Capacity t or m ³

The Employer should select appropriate major headings to suite the nature of the Works. The bidder shall enter in this Schedule all major items of Construction Plant which he proposes to bring on site, both owned and leased (rented), and shall indicate the proposed port of entry.

SCHEDULE OF KEY PERSONNEL

	Name		Summary of qualifications
	(i)	Nominee Alternate	Experience and Present Occupation
Headquarters			
Partner/Director			
Other Key Staff			
(give designation)			
Site Office			
Site Superintendent			
Deputy			
Superintendent			
Supervising			
Engineers			
Construction			
Supervisors			
Other Key Staff			

The bidder shall list in this Schedule the Key personnel (including first nominee and the second choice alternate) he will employ from headquarters and from Site Office to direct and execute the Work, together with their qualifications, positions held and their nationalities.

SCHEDULE OF SUBCONTRACTORS

Element of Work	Approximate Value	Name and Address of Subcontractor	Statement of Similar Works Previously Executed
-----------------	-------------------	-----------------------------------	--

The bidder shall enter in this Schedule a list of the sections and appropriate value of the work for which he proposes to use subcontractors, together with the names and addresses of the proposed subcontractors. The bidder shall also enter a statement of similar works previously executed by the proposed subcontractors, including description, location and value of work, year completed, and name and address of the Employer/Employer's Representative. Notwithstanding such information the bidder, if awarded the Contract, shall remain entirely and solely responsible for the satisfactory completion of the Works.

Section 8

List of Eligible Member Countries of The Asian Development Bank

Section 8. List of Eligible Member Countries Of The Asian Development Bank

Notes on List of Eligible Member Countries of the ADB

The list of eligible member countries of the ADB must be included in the bidding documents. Executing Agencies should verify with ADB that the list is current.

**LIST OF ELIGIBLE MEMBERS OF THE
ASIAN DEVELOPMENT BANK**
(As of 23 July 2003)

Afghanistan	Mongolia
Australia	Myanmar
Austria	Nauru
Azerbaijan	Nepal
Bangladesh	Netherlands, The
Belgium	New Zealand
Bhutan	Norway
Cambodia	Pakistan
Canada	Papua New Guinea
China, People's Republic of	Philippines
Cook Islands	Portugal
Denmark	Samoa
East Timor, Democratic Republic of	Singapore
Fiji Islands	Solomon Islands
Finland	Spain
France	Sri Lanka
Germany	Sweden
Hong Kong, China	Switzerland
India	Taipei, China
Indonesia	Tajikistan
Italy	Thailand
Japan	Tonga
Kazakhstan	Turkey
Kiribati	Turkmenistan
Korea, Republic of	Tuvalu
Kyrgyz Republic	United Kingdom
Lao People's Democratic Republic	Unites States
Malaysia	Uzbekistan
Maldives	Vanuatu
Marshall Islands, Republic of the	Viet Nam, Socialist Republic of
Micronesia, Federated States of	

For the latest list, please see <http://www.adb.org/About/members.asp>

Section 9

Drawings

Section 9. Drawings

List of Drawings

Coding	Title
L3.4-1	Methodology for beam replacement
L3.4-2/1	Existing and new avalanche shed - plan and sections
L3.4-2/2	Existing and new avalanche shed - plan and sections

Section 10

Notes on Selected Clauses of the Conditions of Contract

Section 10. Notes on Selected Clauses of the Conditions of Contract

Preamble

These notes are given to assist in the preparation of Part II – Conditions of Particular Applications for Design-Build and Turnkey Contracts.

Those clauses marked with an asterisk () indicate that a corresponding sample clause appears in Section 3, Part II – Conditions of Particular Application. They are generally given to explain the changes made to clauses of FIDIC conditions of contract to conform to ADB requirements.*

Other notes provide ADB's comments on some sub-clauses suggested by FIDIC for Part II as well as discuss possible alternative scenarios that may arise under a number of other sub-clauses and how these sub-clauses could be reconstructed to suit the circumstances of each case. The latter has been largely drawn from FIDIC's Part II – Guidance for the Preparation of Conditions of Particular Application, First Edition 1995.

Notes on Selected Clauses of the Conditions of Contract

Sub-Clause 1.5 Contract Agreement (*)	As a matter of good practice ADB requires a Contract Agreement to be executed without exception.
Sub-Clause 1.6 Priority of Documents	ADB requires a clear precedence for the various documents involved in the contract to be established. It does not recommend adoption of FIDIC's alternative of modifying the clause to cater for the case where no precedence is prescribed.
Sub-Clause 1.14 Joint and Several Liability	Requirements which apply prior to the Contract becoming effective should be included in the Instructions to Bidders. The Employer will require the leader of the joint venture to be appointed at an early stage, providing a single point of contact thereafter, and will not wish to be involved in a dispute between the members of a joint venture.
Sub-Clause 3.1 Employer's Representative's Duties and Authority (*)	A specific number of examples are given to amplify on FIDIC's general statement given in Part II.
Sub-Clause 4.1 General Obligations (*)	It is important that the Contractor check the design criteria and calculations (if any) before submitting a bid, hence a specific clause to this effect is recommended. ADB does not agree to FIDIC's alternative suggestion of allowing a reasonable period after the Commencement Date for the Contractor to check the design as this approach could lead to fundamental disagreement on design not being uncovered until well after contract formation and in the worst case scenario the contract may have to be aborted to the detriment of all parties concerned.
Sub-Clause 4.2 Performance Security (*)	The Sub-Clause provided in Part II, Conditions of Particular Application should replace FIDIC Sub-Clause 4.2 (Parts I and II), Performance Guarantee and Surety Bond for Performance (included as Annexes A and B of FIDIC Part II), are not recommended by ADB as these represent conditional guarantees. The suggestions in FIDIC Part II of the alternative of an insolvency guarantee in certain cases and of a performance bond guaranteeing the due and proper completion of the works without specifying the amounts or currencies are also not recommended. ADB recommends an unconditional Performance Bank guarantee as set forth in the sample in Section 6.
Sub-Clause 4.3 Contractor's Representative (*)	If the Representative is known at the time of submission of Bid, the Proposal can include the Representative's name; however, the Tenderer may wish to propose alternatives, especially if the contract award is likely to be delayed.

<p>Sub-Clause 4.4 Coordination of The Works (*)</p>	<p>These documents are for a Design-Build and Turnkey Contract wherein the Contractor carries out most if not all of the Works. If there are other contractors on site they would likely be those of local authorities and performing relatively minor Works incidental to the main Works to be undertaken by the Contractor. The required coordination from the Contractor should be "with" and not "of" other contractors. ADB does not agree to the suggestion in FIDIC Part II that the work can be let under several separate contracts as this invalidates the basic concept of a Design-Build or Turnkey mode of contracting. For these same reasons FIDIC's suggestions in Part II under Sub-Clauses 4.17 Safety Precautions and 4.22 Security of the Site are not appropriate under the circumstances.</p>
<p>Sub-Clause 4.6 Assignment of Subcontractor's Obligation</p>	<p>If the Contractor is required to assign its right to subsequently make a claim against the Subcontractor for defective performance, it may be appropriate for the terms of the assignment to entitle the Contractor to require the Employer to make such claim on the Contractor's behalf.</p>
<p>Sub-Clause 4.9 Site Data (*)</p>	<p>This amendment covers data which cannot be physically or legally reproduced and distributed with the bidding documents, as for instance borehole cores, pit samples, meteorological records and maps of restricted areas which can be made accessible for inspection by bidders and later by the Contractor.</p>
<p>Sub-Clause 4.14 Program (*)</p>	<p>It is not deemed appropriate to specify the technique to be used to develop the program.</p>
<p>Sub-Clause 4.16 Contractor's Equipment</p>	<p>If the Contractor is not to provide all the Contractor's equipment necessary to complete the Works, the Employer's obligations should be specified (under Sub-Clause 4.20 for example).</p>
<p>Sub-Clause 4.25 Domestic Preference Security (*)</p>	<p>This is an additional clause to be used when Domestic Preference is permitted by the Loan Agreement and called for under Instructions to Bidders.</p> <p>Only a joint-venture contractor who wins the contract by the application of the Domestic Preference provisions will be required to provide the security.</p>
<p>Sub-Clause 5.2 Construction Documents (*)</p>	<p>While the Employer may rightfully require prior approval before commencement of construction it would be unfair to expect the Contractor to wait indefinitely without recourse for such approval.</p>
<p>Sub-Clause 5.4 Technical Standards (*)</p>	<p>The additional provision for acceptability of other national and international standards is necessary to comply with ADB's requirement of non-restrictiveness.</p>
<p>Sub-Clause 6.5 Working Hours</p>	<p>If the Employer does not wish to specify working hours in the Appendix to Bid, or to restrict them (in order to plan the Employer's Representative's supervision, for example), this sub-clause may be deleted.</p>

Sub-Clause 6.6 Facilities for Staff and Labour	If the Employer will make accommodation available to the Contractor its obligation should be specified.
Sub-Clause 6.8 Contract's Superintendence (*)	English is the official language for use on ADB Contracts.
Sub-Clause 7.7 Restriction on Eligibility (*)	This provision is necessary to comply with the ADB Guidelines for Procurement which require all goods and services for Bank financed project to originate from eligible source countries only.
Sub-Clause 8.2 Time for Completion	If the works are to be taken over in stages, these stages should be defined as sections in the Appendix to Bid.
Sub-Clause 8.6 Liquidated Damages for Delay	These pre-defined damages must be a reasonable pre-estimate of the Employer's probable loss in the event of delay. If the Contract Price is to be quoted as the sum of figures in more than one currency, it may be preferable to define these damages (per day) as a percentage reduction applicable to each of such figures. If the Contract Price is expressed in the Local Currency, the damages per day may either be defined as a percentage or be defined as a figure in such Local Currency; however, unless all payments are to be made in the Local Currency, the currencies of payment should be specified.
Sub-Clause 10.1 Taking-Over Certificate	If the Works are to be taken-over in stages, these stages should be defined as Sections in the Appendix to Bid. Precise geographical definitions are advisable, and the Appendix should include a table, so as to define the aspects relating to the retention money releases, time for completion and liquidated damages for delay (the table is shown in the sample Appendix).
Sub-Clause 11.4 Failure to Pass Tests After Completion	If the first part of this Sub-Clause is to apply, the method of calculating liquidated damages (based on the extent of the failure) should be defined in the Appendix to Bid, and the Employer's Requirements should specify the minimum acceptable performance criteria.
Sub-Clause 12.5 Removal of Defective Work	If the Plant to be supplied under the Contract is such that the value of an item which might have to be removed from the site is substantial (compared, for example, with the amount of the performance security), it may be appropriate to amend the Sub-Clause, so as to require the Contractor to provide additional security in these circumstances.
Sub-Clause 12.10 Unfulfilled Obligations	It may be necessary to review the effect of this Sub-Clause in relation to the period of liability which the applicable law may impose.
Sub-Clause 13.1 Contract Price (*)	ADB requires the inclusion of price adjustment provisions generally for all work contracts and supply contracts with delivery periods which extend beyond one year (or even for shorter periods in countries with high inflation rates).

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**Sub-Clause 13.2
Advance Payment (*)**

The modification introduces the requirement for the execution of the Form of Agreement and the provision of an unconditional bank guarantee, both of which are deemed to be important by ADB.

The total of the advances (and the number of installments) must be specified in the Appendix to Bid. The rate of deduction for the repayments should be checked to ensure that repayment is achieved, before completion; the typical figures in sub-paragraphs (a) and (b) of the Part I Sub-Clause are based on the assumption that the total of the advances is less than 20% of the Contract Price. The acceptable form(s) of guarantee should be included in the bidding documents; an example form may be found in Section 6.

**Sub-Clause 13.4
Schedule of Payments (*)**

Part I contains provisions for interim payments to the Contractor, which can be based on a Schedule of Payments or any other basis for determining interim valuation; if a latter basis is adopted, details should be added in Part II. If payments are to be specified in a Schedule of Payments, the "minimum amount of interim certificates" could be omitted from the Appendix to Bid, and the Schedule of Payments could be in one of the following forms:

- (a) an amount (or percentage of the Contract Price) could be entered for each month during the Time for Completion, which assumes the Contractor's progress to substantially conform to the expectation on which the Schedule was based; or
- (b) the Schedule could be based on actual progress achieved in executing the Works, which necessitates careful definition of the payment milestones.

The figures inserted by the Bidder in the Schedule of Payments should be compared with its bid program (if any), to assess whether they are reasonably consistent with each other.

For Bank financed Design-Build or Turnkey contracts it is recommended that a Schedule of Payment linked to construction progress and, where possible, evidenced by easily identifiable milestones be adopted.

**Sub-Clause 13.8
Delayed Payment**

If the discount rate of the Central Bank in the country of the currency of payment, plus 3% is not a reasonable indication of the Contractor's financing costs, a new rate may need to be defined; alternatively, the actual financing costs could be paid, taking account of local financing arrangements.

**Sub-Clause 13.15
Calculation of
Payments in
Foreign Currency**

Instead of the Contract Price being quoted in the currencies of payments, this Sub-Clause relates to the situation where it is quoted in Local Currency only, but is paid, by application of percentages and exchange rates, in various currencies (which may, but need not, include the Local Currency). If this Sub-Clause is to apply, the name of the Local Currency must be stated in the Bid, so that the Contract Price is a sum in that currency only, and the Appendix to Bid should include a table for insertion of the proportions and exchange rates (the Table is shown in the sample

**Sub-Clause 13.17
Adjustment for
Changes in Cost (*)**

Appendix). If all payments and deductions are not to be in the same currency proportions, an additional Sub-Clause will be required: also, an additional table will be required in the Appendix to Bid if there are Sections.

As noted under Sub-Clause 13.1, ADB requires the inclusion of price adjustment provisions generally for all works contracts and supply contracts with delivery periods extending beyond one year.

For a Design-Build or Turnkey contract, whose outstanding feature is simplicity and characterized by a lump sum price structure, it is deemed appropriate to apply the price adjustment mechanism to the whole lump sum of each interim payment and not to each type of construction work performed and plant supplied as in the case of civil work contract where payments are based on measurement.

**Sub-Clause 13.18
Taxation (*)**

This sub-clause reflects ADB's standard approach adopted for all Bank-financed contracts in respect of both foreign and local taxes.

**Clause 14
Variations**

Variations can be initiated by any of three ways:

- (a) the Employer's Representative may instruct the variation under Sub-Clause 14.1, without prior agreement as to feasibility or price;
- (b) the Contractor may initiate its own proposals under Sub-Clause 14.2, to the benefit of both parties; or
- (c) the Employer's Representative may request a proposal under Sub-Clause 14.3, seeking prior agreement so as to minimize dispute.

In order to value variations, the Bidder can be required to submit a detailed breakdown of the contract price, including quantities, unit rates and other pricing information, otherwise the Employer's Representative must have the necessary expertise to value any variations which may be required.

**Sub-Clause 14.5
Provisional Sums**

Although generally inappropriate for this type of contract, a Provisional Sum may be required for parts of the Works which are not required to be priced at the risk of the Contractor; for example, to cover goods which the Employer wants to select, or to deal with a major uncertainty regarding sub-surface conditions. It is essential to define the scope of each Provisional Sum (in a Schedule, probably), since such scope will then be excluded from the other elements of the Contract Price.

If a Provisional Sum is likely to be valued under Sub-Clause 14.5(b), the percentage should be quoted by bidders in the Appendix to Bid. If Provisional Sums relate to radically different types of work, it may be appropriate to permit tenderers to quote a different percentage for each Provisional Sum.

**Sub-Clause 15.2
Termination**

The Employer should verify that the wording of the sub-clause, and anticipated termination is not in conflict with the applicable law of the country.

**Sub-Clause 16.2
Termination**

The Employer should verify that the wording of this sub-clause is not in conflict with the applicable law; the Contractor should verify that the anticipated termination is not in conflict with such law.

**Sub-Clause 17.3
Employer's Risks (*)**

The wordings of a similar clause in the ADB Standard Bidding Documents for Procurement of Civil Works are adopted for consistency except that loss or damage due to the design of the works is removed as an Employer's risk since in a Design-Build or Turnkey contract the contractor is responsible for the design of the Works.

**Sub-Clause 18.2
Insurance for Works
and Contractor's
Equipment (*)**

The amendments are made for consistency with ADB Standard Bidding Documents for Procurement of Civil Works and especially to conform to ADB's requirement that the insurance be valid from the first working day after the Commencement Date.

**Clause 19
Force Majeure**

The Employer should verify that the wording of this clause and any anticipated action under it is not in conflict with the applicable law.

**Sub-Clause 20.3
Dispute Adjudication**

The Contract should include provisions which, whilst not discouraging the parties from reaching agreement as the works proceed, allows them to refer contentious matters to impartial individual(s) with suitable technical qualifications. The provisions depend, for their success, on the parties' confidence in the agreed individual(s) and in the individual's personal and professional qualities. Therefore, it is essential that the arrangements are not imposed by either party on the other party, and that the nominating authority is wholly impartial.

The Institution of Engineers or equivalent professional association in most countries maintain a list of experienced arbitrators and the President of the institution/association could be named as the authority to nominate the arbitrators. It is preferable, but not essential, for the individual(s) to be agreed by the time the Bid is accepted: the parties may be able to agree to the appointment immediately after the award of the Contract, when relationships are usually favorable. The "Dispute Adjudication Board" is the defined term for such individual(s), but such definition does not preclude the use of one expert, who would thus act as a one-person Board. At an early stage, consideration should be given as to whether a one-person or three-person Board is preferable for a particular project, taking account of its size, duration and the fields of expertise which will be involved.

For a one-person Board, the Employer may suggest (in a schedule possibly, with curriculum vitae) the names of acceptable persons for the Dispute Adjudication Board, for bidders to select. From the list, each bidder would nominate acceptable potential members, preferably with alternates in case some subsequently decline the appointment.

For a three-person Board, the Employer may similarly propose one member, and invite bidders to approve and to suggest (in a Schedule, possibly, with curriculum vitae) the names of acceptable persons for another member of the Dispute Adjudication Board, for

the Employer's approval. The Employer could similarly suggest names of acceptable persons for the third member of the Dispute Adjudication Board, for bidders to select. Whichever method is used by the parties to attempt agreement on the appointment of the Dispute Adjudication Board, it is important to avoid the matter becoming a major part of the pre-contracting negotiations. The example wording in the Bid therefore seeks to avoid the bidder's suggestions becoming a condition of the Bid, introducing a potential delay to the award of a contract

**Sub-Clause 20.5
Amicable Settlement**

The provisions of this sub-clause are intended to encourage the parties to settle a dispute amicably; for example, by direct negotiation, mediation or conciliation. Amicable settlement procedures depend, for their success, on confidentiality and on agreement of the procedure; therefore, it is preferable that such procedures are not imposed by either party on the other party. The parties could consider initiating proposals for such procedures upon award of the Contract, when relationships are usually favorable.

**Sub-Clause 20.6
Arbitration**

The Contract should include provisions for the resolution by arbitration of any disputes which are not resolved amicably. Arbitration has practical advantages over litigation and may be more mutually acceptable to the parties.

Careful consideration should be given to ensuring that the international arbitration rules chosen are compatible with the provisions of Clause 20 and the other elements to be set out in the Appendix to Bid. The Rules of Arbitration of the International Chamber of Commerce (the ICC) are recommended. The number of arbitrators, place of arbitration and language of arbitration, shall be specified in the Appendix to Bid.