



## **Support Project to the Regional Food Security Reserve in West Africa**

**COMISSÃO DA CEDEAO**

**ECOWAS COMMISSION**



**COMMISSION DE LA CEDEAO**

Département Agriculture, Environnement et Ressources en Eau

Department of Agriculture, Environment and Water Resources

**ARAA / RAAF**

Agence Régionale pour l'Agriculture et l'Alimentation

Regional Agency for Agriculture and Food

# **Bidding documents**

**Issued date** : October 17, 2018

**Procurement for :**

## **Supply and delivery of 756 tons of cereals for the ECOWAS Regional Food Security Reserve**

**AOI N°:** ECW/DAERE/ARAA/RRSA/2018/AOI/03

**Project :** Support Project to the Regional Food Security Reserve in West Africa

**Purchaser :** ECOWAS Commission



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## **PART 1**

### **Bidding Procedures**

## Section I. Instructions to Bidders

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## Section I. Instructions to Bidders

### General

1. **Scope of Bid**
  - 1.1 In connection with the Invitation for Bids, **specified in the Bid Data Sheet (BDS)**, the Purchaser, **as specified in the BDS**, issues these Bidding Documents for the supply of Goods and Related Services incidental thereto as specified in Section VII, Schedule of Requirements. The name, identification and number of lots (contracts) of this International Competitive Bidding (ICB) procurement are **specified in the BDS**.
  - 1.2 Throughout these Bidding Documents:
    - (a) the term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, telex) with proof of receipt;
    - (b) if the context so requires, “singular” means “plural” and vice versa; and
    - (c) “day” means calendar day.
2. **Source of Funds**
  - 2.1 The Purchaser **specified in the BDS** has applied for or received financing (hereinafter called “funds”) from the Agence Française de Développement (hereinafter called “the Agency”), toward the project named **in BDS**. The Purchaser intends to apply a portion of the funds to eligible payments under the contract for which these Bidding Documents are issued.
3. **Corrupt and Fraudulent Practices**
  - 3.1 The Agency requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section VI.
  - 3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents (where declared or not), sub-contractors, sub-consultants, service providers or suppliers and to permit the Agency to inspect all accounts, records and other documents relating to the submission of the application, bid submission (in case prequalified), and contract performance (in the case of award), and to have them audited by auditors appointed by the Agency.
4. **Eligible Bidders**
  - 4.1 A Bidder may be a firm that is a private entity, a government-owned entity—subject to ITB 4.3—or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.
  - 4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this bidding process, if the Bidder:
    - (a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
    - (b) receives or has received any direct or indirect subsidy from another Bidder; or
    - (c) has the same legal representative as another Bidder; or
    - (d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or
    - (e) participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such

Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or

- (f) any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid; or
- (g) any of its affiliates has been hired (or is proposed to be hired) by the Purchaser for the Contract implementation; or
- (h) has a close business or family relationship with a professional staff of the Purchaser (or of the project implementing agency, or of a recipient of a part of the funds) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Agency throughout the procurement process and execution of the contract

- 4.3 The Agency's eligibility criteria to bid are described in Section V – Eligibility criteria and social and environmental responsibility.
- 4.4 A Bidder shall not be under suspension from bidding by the Purchaser as the result of the operation of a Bid–Securing Declaration.
- 4.5 A Bidder shall provide such evidence of eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.

**5. Eligible Goods and Related Services**

- 5.1 All the Goods and Related Services to be supplied under the Contract and financed by the Agency may have their origin in any country in accordance with Section V, Eligibility criteria and social and environmental responsibility.
- 5.2 For purposes of this Clause, the term “goods” includes commodities, raw material, machinery, equipment, and industrial plants; and “related services” includes services such as insurance, installation, training, and initial maintenance.
- 5.3 The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

**Contents of Bidding Document**

**6. Sections of Bidding Document**

- 6.1 The Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.

**PART 1 - Bidding Procedures**

- Section I. Instructions to Bidders (ITB)
- Section II. Bidding Data Sheet (BDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Bidding Forms
- Section V. Eligibility criteria and social and environmental responsibility
- Section VI. Agency Policy-Corrupt and Fraudulent Practices

**PART 2 - Supply Requirements**

- Section VII. Schedule of Requirements

**PART 3 - Contract**

- Section VIII. General Conditions of Contract (GCC)
- Section IX. Special Conditions of Contract (SCC)
- Section X. Contract Forms

6.2 The Invitation for Bids issued by the Purchaser is not part of the Bidding Document.

6.3 Unless obtained directly from the Purchaser, the Purchaser is not responsible for the completeness of the document, responses to requests for clarification or Addenda to the Bidding Document in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Purchaser shall prevail.

6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents and to furnish with its Bid all information or documentation as is required by the Bidding Documents.

**7. Clarification of Bidding Documents**

7.1 A Bidder requiring any clarification of the Bidding Document shall contact the Purchaser in writing at the Purchaser's address **specified in the BDS**. The Purchaser will respond in writing to any request for clarification, provided that such request is received no later than 14 (fourteen) days prior to the deadline for submission of bids. The Purchaser shall forward copies of its response to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so **specified in the BDS**, the Purchaser shall also promptly publish its response at the web page **identified in the BDS**. Should the clarification result in changes to the essential elements of the Bidding Documents, the Purchaser shall amend the Bidding Documents following the procedure under ITB 8 and ITB 22.2.

**8. Amendment of Bidding Document**

8.1 At any time prior to the deadline for submission of bids, the Purchaser may amend the Bidding Documents by issuing addenda.

8.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents from the Purchaser in accordance with ITB 6.3. The Purchaser shall also promptly publish the addendum on the Purchaser's web page in accordance with ITB 7.1.

8.3 To give Bidders reasonable time in which to take an addendum into account in preparing their bids, the Purchaser may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2.

**Preparation of Bids**

**9. Cost of Bidding**

9.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

**10. Language of Bid**

10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Purchaser, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages into the language **specified in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.

**11. Documents Comprising the Bid**

11.1 The Bid shall comprise the following:

(a) Letter of Bid in accordance with ITB 12;



- (b) completed schedules , in accordance with ITB 12 and 14
  - (c) Bid Security or Bid-Securing Declaration, in accordance with ITB 19.1;
  - (d) alternative bids, if permissible, in accordance with ITB 13;
  - (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
  - (f) Statement of Integrity, Eligibility and Social and Environmental Responsibility duly signed, in accordance with ITB 12;
  - (g) documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the contract if its bid is accepted;
  - (h) documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility to bid;
  - (i) documentary evidence in accordance with ITB 16, that the Goods and Related Services to be supplied by the Bidder are of eligible origin;
  - (j) documentary evidence in accordance with ITB 16 and 29, that the Goods and Related Services conform to the Bidding Documents;
  - (k) any other document **required in the BDS**.
- 11.2 In addition to the requirements under ITB 11.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement.
- 11.3 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.
- 12. Letter of Bid, Statement of Integrity and Price Schedules**
- 12.1 The Letter of Bid, the Statement of Integrity and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.4. All blank spaces shall be filled in with the information requested.
- 13. Alternative Bids**
- 13.1. Unless otherwise **specified in the BDS**, alternative bids shall not be considered.
- 14. Bid Prices and Discounts**
- 14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Price Schedules shall conform to the requirements specified below.
- 14.2 All lots (contracts) and items must be listed and priced separately in the Price Schedules.
- 14.3 The price to be quoted in the Letter of Bid shall be the total price of the bid, excluding any discounts offered.
- 14.4 The Bidder shall quote any discounts and indicate the methodology for their application in the Letter of Bid.
- 14.5 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, **unless otherwise specified in the BDS** A bid submitted with an adjustable price quotation shall be treated as nonresponsive and shall be rejected, pursuant to ITB 29. However, if in accordance with the BDS, prices quoted by the Bidder shall be subject to adjustment during the performance of the

Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

- 14.6 If so specified in ITB 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Unless otherwise **specified in the BDS**, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer discounts for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4 provided the bids for all lots (contracts) are opened at the same time.
- 14.7 The terms EXW, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, **as specified in the BDS**.
- 14.8 Prices shall be quoted as specified in each Price Schedule included in Section IV, Bidding Forms. The dis-aggregation of price components is required solely for the purpose of facilitating the comparison of bids by the Purchaser. In quoting prices, the Bidder shall be free to use transportation through carriers registered in any eligible country, in accordance with Section V, Eligibility criteria and social and environmental responsibility. Similarly, the Bidder may obtain insurance services from any eligible country in accordance with Section V, Eligibility criteria and social and environmental responsibility. Prices shall be entered in the following manner:
- (a) For Goods manufactured in the Purchaser's Country:
    - (i) the price of the Goods quoted EXW (ex-works, ex-factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Goods;
    - (ii) any Purchaser's Country sales tax and other taxes which will be payable on the Goods if the contract is awarded to the Bidder; and
    - (iii) the price for inland transportation, insurance, and other local services required to convey the Goods to their final destination (Project Site) **specified in the BDS**.
  - (b) For Goods manufactured outside the Purchaser's Country, to be imported:
    - (i) the price of the Goods, quoted CIP named place of destination, in the Purchaser's Country, as **specified in the BDS**; and
    - (ii) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) **specified in the BDS**;
  - (c) For Goods manufactured outside the Purchaser's Country, already imported:
    - (i) the price of the Goods, including the original import value of the Goods; plus any mark-up (or rebate); plus any other related local cost, and custom duties and other import taxes already paid or to be paid on the Goods already imported.
    - (ii) the custom duties and other import taxes already paid (need to be supported with documentary evidence) or to be paid on the Goods already imported;

- (iii) the price of the Goods, obtained as the difference between (i) and (ii) above;
    - (iv) any Purchaser's Country sales and other taxes which will be payable on the Goods if the contract is awarded to the Bidder; and
    - (v) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) **specified in the BDS.**
  - (d) for Related Services, other than inland transportation and other services required to convey the Goods to their final destination, whenever such Related Services are specified in Section VII - Schedule of Requirements:
    - (i) the price of each item comprising the Related Services (exclusive of any applicable taxes);
    - (ii) all custom duties, sales and other taxes applicable in the Purchaser's country, payable on the Related Services, if the Contract is awarded to the Bidder.
- 15. Currencies of Bid and Payment**      15.1      The currency(ies) of the bid and the currency(ies) of payments shall be **as specified in the BDS.** The Bidder shall quote in the currency of the Purchaser's Country the portion of the bid price that corresponds to expenditures incurred in the currency of the Purchaser's country, unless otherwise **specified in the BDS.**
- 16. Documents Establishing the Eligibility and Conformity of the Goods and Related Services**
- 16.1      To establish the eligibility of the Goods and Related Services in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Bidding Forms.
- 16.2      To establish the conformity of the Goods and Related Services to the Bidding Documents, the Bidder shall furnish as part of its Bid the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.
- 16.3      The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.
- 16.4      The Bidder shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period **specified in the BDS** following commencement of the use of the goods by the Purchaser.
- 16.5      Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

- 17. Documents Establishing the Eligibility and Qualifications of the Bidder**
- 17.1 To establish Bidder's their eligibility in accordance with ITB 4, Bidders shall complete the Letter of Bid, included in Section IV, Bidding Forms.
- 17.2 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Purchaser's satisfaction:
- (a) that, if **required in the BDS**, a Bidder that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Bidding Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in the Purchaser's Country;
  - (b) that, if **required in the BDS**, in case of a Bidder not doing business within the Purchaser's Country, the Bidder is or will be (if awarded the contract) represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
  - (c) that the Bidder meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.
- 18. Period of Validity of Bids**
- 18.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the Purchaser in accordance with ITB 22.1. A bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive.
- 18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 19, it shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3.
- 18.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be determined as follows:
- (a) In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor **specified in the BDS**.
  - (b) In the case of adjustable price contracts, no adjustment shall be made.
  - (c) In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above.
- 19. Bid Security**
- 19.1 The Bidder shall furnish as part of its bid, either a Bid-Securing Declaration or a bid security, as **specified in the BDS**, in original form and, in the case of a bid security, in the amount and currency **specified in the BDS**.
- 19.2 A Bid Securing Declaration shall use the form included in Section IV, Bidding Forms.
- 19.3 If a bid security is specified pursuant to ITB 19.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder's option :
- (a) an unconditional guarantee issued by a bank or financial institution (such as an insurance, bonding or surety company);
  - (b) an irrevocable letter of credit;
  - (c) a cashier's or certified check; or
  - (d) another security **specified in the BDS**,

from a reputable source from an eligible country as specified in Section V-Eligibility criteria and social and environmental responsibility. If the unconditional guarantee is issued by a financial institution located outside the Purchaser's Country, the issuing financial institution shall have a correspondent financial institution located in the Purchaser's Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Purchaser prior to bid submission. The bid security shall be valid for twenty-eight (28) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

- 19.4 If a Bid Security is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive Bid Security or Bid-Securing Declaration shall be rejected by the Purchaser as non-responsive.
- 19.5 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the contract and furnishing the Performance Security pursuant to ITB 42.
- 19.6 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the contract and furnished the required performance security.
- 19.7 The Bid Security may be forfeited or the Bid Securing Declaration executed:
  - (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder ; or
  - (b) if the successful Bidder fails to:
    - (i) sign the Contract in accordance with ITB41; or
    - (ii) furnish a performance security in accordance with ITB 42.
- 19.8 The bid security or Bid- Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the bid security or Bid-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1 and ITB 11.2.
- 19.9 If a bid security is **not required in the BDS**, pursuant to ITB 19.1, and:
  - (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder ; or
  - (b) if the successful Bidder fails to: sign the Contract in accordance with ITB 41; or furnish a performance security in accordance with ITB 42;

the Purchaser may, **if provided for in the BDS**, declare the Bidder ineligible to be awarded a contract by the Purchaser for a period of time **as stated in the BDS**.

## 20. Format and Signing of Bid

- 20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL." Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE." In addition, the Bidder shall submit copies of the bid, in the number **specified in the BDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation **as specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid.

- 20.3 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

### Submission and Opening of Bids

- 21. Sealing and Marking of Bids**
- 21.1 The Bidder shall enclose the original and all copies of the bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL", "ALTERNATIVE" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 21.2 The inner and outer envelopes shall:
- (a) bear the name and address of the Bidder;
  - (b) be addressed to the Purchaser in accordance with ITB 22.1;
  - (c) bear the specific identification of this bidding process indicated in ITB 1.1; and
  - (d) bear a warning not to open before the time and date for bid opening.
- 21.3 If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the bid.
- 22. Deadline for Submission of Bids**
- 22.1 Bids must be received by the Purchaser at the address and no later than the date and time **specified in the BDS. When so specified in the BDS**, bidders shall have the option of submitting their bids electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedures **specified in the BDS**.
- 22.2 The Purchaser may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 23. Late Bids**
- 23.1 The Purchaser shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Purchaser after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.
- 24. Withdrawal, Substitution, and Modification of Bids**
- 24.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITB 20.2. The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:
- (a) prepared and submitted in accordance with ITB 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" and
  - (b) received by the Purchaser prior to the deadline prescribed for submission of bids, in accordance with ITB 22.
- 24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.
- 24.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

- 25. Bid Opening**
- 25.1 Except as in the cases specified in ITB 23 and 24, the Purchaser shall publicly open and read out in accordance with ITB 25 all bids received by the deadline (regardless of the number of bids received), at the date, time and place **specified in the BDS** in the presence of Bidders' designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be as **specified in the BDS**.
- 25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only bids that are opened and read out at Bid opening shall be considered further.
- 25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Prices, per lot (contract) if applicable, including any discounts and alternative bids; the presence or absence of a Bid Security or Bid-Securing Declaration, if required; and any other details as the Purchaser may consider appropriate. Only discounts and alternative bids read out at Bid opening shall be considered for evaluation. The Letter of Bid and the Price Schedules are to be initialed by a minimum of three representatives of the Purchaser attending bid opening. The Purchaser shall neither discuss the merits of any bid nor reject any bid (except for late bids, in accordance with ITB 23.1).
- 25.4 The Purchaser shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot (contract) if applicable, including any discounts, and alternative bids; and the presence or absence of a Bid Security or Bid-Securing Declaration, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

### Evaluation and Comparison of Bids

- 26. Confidentiality**
- 26.1 Information relating to the examination, evaluation, and comparison of the bids, and qualification of the Bidders and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with the bidding process until information on Contract Award is communicated to all Bidders in accordance with ITB 40.
- 26.2 Any attempt by a Bidder to influence the Purchaser in the examination, evaluation, and comparison of the bids, and qualification of the bidders, or contract award decisions may result in the rejection of its Bid.
- 26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract Award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it shall do so in writing.

- 27. Clarification of Bids**
- 27.1 To assist in the examination, evaluation, comparison of the bids, and qualification of the Bidders, the Purchaser may, at its discretion, ask any Bidder for a clarification of its Bid, given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the Evaluation of the bids, in accordance with ITB 31.
- 27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Purchaser's request for clarification, its bid may be rejected.
- 28. Deviations, Reservations, and Omissions**
- 28.1 During the evaluation of bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Documents;
  - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and
  - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Documents



- 29. Determination of Responsiveness**
- 29.1 The Purchaser's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.
- 29.2 A substantially responsive Bid is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- (a) if accepted, would
    - (i) affect in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or
    - (ii) limit in any substantial way, inconsistent with the Bidding Documents, the Purchaser's rights or the Bidder's obligations under the proposed Contract; or
  - (b) if rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids.
- 29.3 The Purchaser shall examine the technical aspects of the bid submitted in accordance with ITB 16, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.
- 29.4 If a bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the Purchaser and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 30. Nonconformities, Errors and Omissions**
- 30.1 Provided that a Bid is substantially responsive, the Purchaser may waive any nonmaterial nonconformities in the Bid.
- 30.2 Provided that a bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 30.3 Provided that a bid is substantially responsive, the Purchaser shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component.

- 31. Correction of Arithmetic Errors**
- 31.1 Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:
- (a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;
  - (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
  - (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 31.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1, shall result in the rejection of the Bid.
- 32. Conversion to Single Currency**
- 32.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted in a single currency as **specified in the BDS**.
- 33. Margin of Preference**
- 33.1 **Unless otherwise specified in the BDS**, a margin of preference shall not apply.
- 34. Evaluation of Bids**
- 34.1 The Purchaser shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.
- 34.2 To evaluate a Bid (evaluation will be done for Items or Lots (contracts), as **specified in the BDS**), the Purchaser shall consider the following:
- (a) the Bid Price as quoted in accordance with clause 14;
  - (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;
  - (c) price adjustment due to discounts offered in accordance with ITB 14.4;
  - (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;
  - (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 30.3;
  - (f) the additional evaluation factors as specified in Section III, Evaluation and Qualification Criteria;
- 34.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.
- 34.4 If these Bidding Documents allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid Form, is specified in Section III, Evaluation and Qualification Criteria
- 34.5 The Purchaser's evaluation of a bid will exclude and not take into account:
- (a) in the case of Goods manufactured in the Purchaser's Country, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the Bidder;

- (b) in the case of Goods manufactured outside the Purchaser's Country, already imported or to be imported, customs duties and other import taxes levied on the imported Good, sales and other similar taxes, which will be payable on the Goods if the contract is awarded to the Bidder;
  - (c) in the case of Related Services, customs duties and sales and other similar taxes that will be payable on the Related Services if the contract is awarded to the Bidder;
  - (d) any allowance for price adjustment during the period of execution of the contract, if provided in the bid.
- 34.6 The Purchaser's evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise **specified** in Section III, Evaluation and Qualification Criteria. The criteria and methodologies to be used shall be as specified in Section III, Evaluation and Qualification Criteria.
- 34.7 If the bid, which results in the lowest Evaluated Bid Price, is significantly lower than the Purchaser's estimate, the Purchaser may require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the supply requirements and method and schedule proposed. If it turns out that the bid price is abnormally low, the bid may be declared non-compliant and rejected.
- 35. **Comparison of Bids**
  - 35.1 The Purchaser shall compare the evaluated prices of all substantially responsive bids established in accordance with ITB 34.2 to determine the lowest evaluated bid.
- 36. **Qualification of the Bidder**
  - 36.1 The Purchaser shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
  - 36.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.
  - 36.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Purchaser shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.
- 37. **Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids**
  - 37.1 The Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

#### Award of Contract

- 38. **Award Criteria**
  - 38.1 Subject to ITB 37.1, the Purchaser shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
- 39. **Purcha**
  - 39.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section VII,

<b>ser's Right to Vary Quantities at Time of Award</b>	Schedule of Requirements, provided this does not exceed the percentages <b>specified in the BDS</b> , and without any change in the unit prices or other terms and conditions of the bid and the Bidding Documents.
<b>40. Notification of Award</b>	<p>40.1 Prior to the expiration of the period of bid validity, the Purchaser shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Purchaser will pay the Supplier in consideration of the supply of Goods (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price"). At the same time, the Purchaser shall also notify all other Bidders of the results of the bidding..</p> <p>40.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.</p> <p>40.3 The Purchaser shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.1, requests in writing the grounds on which its bid was not selected.</p>
<b>41. Signing of Contract</b>	<p>41.1 Promptly after notification, the Purchaser shall send the successful Bidder the Contract Agreement.</p> <p>41.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.</p> <p>41.3 Notwithstanding ITB 41.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the products/goods, systems or services to be supplied, where such export restrictions arise from trade regulations from a country supplying those products/goods, systems or services, the Bidder shall not be bound by its bid, always provided however, that the Bidder can demonstrate to the satisfaction of the Purchaser and of the Agency that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract.</p>
<b>42. Performance Security</b>	<p>42.1 Within twenty eight (28) days of the receipt of notification of award from the Purchaser, the successful Bidder shall furnish the Performance Security in accordance with the GCC, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another Form acceptable to the Purchaser. If the Performance Security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Purchaser. A foreign institution providing a bond shall have a correspondent financial institution located in the Purchaser's Country.</p> <p>42.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security or execution of the Bid-Securing Declaration. In that event the Purchaser may award the Contract to the next lowest evaluated Bidder, whose bid is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.</p>

## Section II. Bidding Data Sheet (BDS)

The following specific data for the goods to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

ITB Clause Reference	A. General
ITB 1.1	The number of the Invitation for Bids is: <b>ECW/DAERE/ARAA/RRSA/2018/AOI/03</b>
ITB 1.1	The Purchaser is: <b>ECOWAS Commission represented by the Regional Agency for Agriculture and Food.</b>
ITB 1.1	<p>The number, identification and names of the lots (contracts) comprising this ICB are:</p> <p><b>Lot -Western Atlantic Sub-area : Senegal/Gambia/Guinea Bissau/Cape Verde</b></p> <ul style="list-style-type: none"> <li>- Sub lot 3.1. White maize : ..... 151.2 tons</li> <li>- Sub lot 3.2. White Sorghum : ..... 189 tons</li> <li>- Sub lot 3.3. Millet : ..... 189 tons</li> <li>- Sub lot 3.4. White rice : ..... 226.8 tons</li> </ul> <p>Sub lots are indivisible</p>
ITB 2.1	The name of the Project is: <b>Support Project to the Regional Food Security Reserve in West Africa</b>
	<b>A. Contents of Bidding Documents</b>
ITB 7.1	<p>For <b>Clarification of bid purposes</b> only, the Purchaser's address is:</p> <p><b>Regional Agency for Agriculture and Food</b>  83, rue de la Pâtur (SUPER TACO),  City : LOME  Postal code : 01 BP 4817 Lomé-Togo  Country : Togo  Phone : 00228 22 21 40 03  Email : <a href="mailto:procurement@araa.org">procurement@araa.org</a> : et/cc : <a href="mailto:araa@araa.org">araa@araa.org</a></p>
	<b>B. Preparation of Bids</b>
ITB 10.1	<p>The language of the bid is <b>French or English</b></p> <p>All correspondence exchange shall be in the English or French language. Language for translation of supporting documents and printed literature French or English</p> <p>In case of conflict, the reference will be French.</p>
ITB 11.1 (k)	<p>The Bidder shall submit the following additional documents in its bid:</p> <ul style="list-style-type: none"> <li>• Authorization/License to operate from a due authority</li> <li>• Original Complete Bank details (IBAN) from the bidder's bank</li> </ul>
ITB 13.1	Alternative Bids shall not be considered.

<b>ITB 14.5</b>	The prices quoted by the Bidder shall not be adjustable
<b>ITB 14.6</b>	Prices quoted for each item of a sub lot shall correspond at least to 100 percent of the quantities specified for this item of a lot.
<b>ITB 14.7</b>	<p>The Incoterms edition is Incoterms 2010. Goods shall be delivered in the purchaser warehouse (DDP + unloading in warehouse). This assumes that the supplier must include in his prices among others, the costs of transportation and unloading in the warehouse of the purchaser.</p> <p>Transport to the point of delivery and unloading to the purchaser stores shall be at the expense and risk to the supplier</p> <p>For inter- country delivery, the ECOWAS Commission shall facilitate exemption if applicable.</p>
<b>ITB 14.8 (b) (i)</b>	Place of Destination: inside Purchaser's <b>warehouse</b>
<b>ITB 14.8 (a) (iii);(b)(ii) and (c)(v)</b>	<p>"Final destination (Project Site)":</p> <ul style="list-style-type: none"> <li>• Mali (Cities : Sikasso, Koutiala, Ségou)</li> </ul> <p>Bidders have to propose transportation costs per ton and per kilometer for each geographical area, the EXW price of the food, the transport cost and unloading cost for delivery in each city/town of Mali mentioned above.</p>
<b>ITB 15.1</b>	<p>The prices shall be quoted by the bidder in: Euros</p> <p>The Bidder is not required to quote in the currency of the Purchaser's Country the portion of the bid price that corresponds to expenditures incurred in that currency.</p>
<b>ITB 16.4</b>	Not applicable
<b>ITB 17.2 (a)</b>	Not applicable
<b>ITB 17.2 (b)</b>	Not applicable
<b>ITB 18.1</b>	The bid validity period shall be 120 days
<b>ITB 18.3 (a)</b>	The bid price shall be adjusted by the following factor: not applicable
<b>ITB 19.1</b>	<p>A Bid Security is required.</p> <p>If a bid security shall be required, the amount and currency of the bid security shall be: 1% of the Purchaser's Contract estimated in Euro. The bid security shall be established to the benefit of ECOWAS - Regional Agency for Agriculture and Food. The Bid Security is required for each concerned sub-lot, following the above conditions. Bidders can submit a single bid security for all sub-lots for which they bid.</p>
<b>ITB 19.3 (d)</b>	Other types of acceptable securities: none
<b>ITB 20.1</b>	In addition to the original of the bid, the number of copies is: two (2) hard copies and one (1) soft copy under PDF Format on USB or CD-Rom..

<b>ITB 20.2</b>	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: a power of a competent authority established in the name of the signatory of the bid
	<b>C. Submission and Opening of Bids</b>
<b>ITB 22.1</b>	<p>For bid submission purposes, the Purchaser's address is:</p> <p><b>Regional Agency for Agriculture and Food</b>  83, rue de la Pâture (SUPER TACO),  City : LOME  Postal code : 01 BP 4817 Lomé-Togo  Country : Togo</p> <p><b>The deadline for the submission of bids is:</b>  Date: <b>December 17<sup>th</sup>, 2018</b>  Time: <b>03'00 pm GMT</b></p>
<b>ITB 22.1</b>	Bidders <b>shall not</b> have the option of submitting their bids electronically
<b>ITB 25.1</b>	<p>The bid opening shall take place at:</p> <p><b>Regional Agency for Agriculture and Food</b>  83, rue de la Pâture (SUPER TACO),  City : LOME  Postal code : 01 BP 4817 Lomé-Togo  Country : Togo</p> <p>Date: <b>December 17<sup>th</sup>, 2018</b>  Time: <b>03'20 pm GMT</b></p>
	<b>D. Evaluation and Comparison of Bids</b>
<b>ITB 32.1</b>	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in different currencies into a single currency is: <b>Euro</b></p> <p>The source of exchange rate shall be: <a href="http://ec.europa.eu/budget/infoeuro/">http://ec.europa.eu/budget/infoeuro/</a></p> <p>The date for the exchange rate shall be: bid opening date.</p>
<b>ITB 33.1</b>	A margin of domestic preference of <b>15% shall</b> apply. the application methodology is specified in Section III, Evaluation and Qualification Criteria.
<b>ITB 34.2</b>	Evaluation will be done for sub-lots. Bidder may be awarded lower quantities than those for which they bid for.
	<b>E. Award of Contract</b>
<b>ITB 39.1</b>	<p>The maximum percentage by which quantities may be increased is: <b>15%</b></p> <p>The maximum percentage by which quantities may be decreased is: <b>15%</b></p>

## Section III. Evaluation and Qualification Criteria

This Section complements the Instructions to Bidders. It contains the criteria that the Purchaser may use to evaluate a bid and determine whether a Bidder has the required qualifications. No other criteria shall be used.

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## **1. Evaluation (ITB 34)**

### **1.1 Evaluation Criteria (ITB 34.6)**

The Purchaser's evaluation of Bids for Goods may take into account, in addition to the Bid Price quoted in accordance with ITB Clause 14.8, one or more of the following factors as specified in ITB Sub-Clause 34.2 (f), using the following criteria and methodologies.

**(a) Delivery Schedule (**

The Goods specified in the List of Goods are required to be delivered within the acceptable time range (after the earliest , 30 days and before the final date, 40 days, both dates inclusive) specified in Section VII, Delivery Schedule. No credit will be given to deliveries before the earliest date, and bids offering delivery after the final date shall be treated as non-responsive.

### **1.2. Multiple Contracts (ITB 34.4)**

The Purchaser shall award multiple contracts to the Bidder that offers the lowest evaluated combination of bids (one contract per bid) and meets the post-qualification criteria (this Section III, 2. Qualification (ITB 36)).

The Purchaser shall:

- (a) evaluate only lots or contracts that include at least the percentages of items per lot and quantity per item as specified in ITB Sub Clause 14.6
- (b) take into account:

  - (i) the lowest-evaluated bid for each lot and
  - (ii) the price reduction per lot and the methodology for its application as offered by the Bidder in its bid.

## 2. Qualification (ITB 36)

After determining the lowest-evaluated bid in accordance with ITB 35.1, the Purchaser shall carry out the postqualification of the Bidder in accordance with ITB 36, using only the requirements specified. Requirements not included in the tables below shall not be used in the evaluation of the Bidder's qualifications.

Eligibility and Qualification Criteria				Compliance Requirements			Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
1. Eligibility							
1.1	Nationality	Nationality in accordance with ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI – 1.1 and 1.2, with attachments
1.2	Conflict of Interest	No conflicts of interest in accordance with ITB 4.2	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Letter of Bid
1.3	Agency Eligibility	Not being ineligible to the Agency financing, as described in ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Statement of Integrity (appendix to Letter of Bid)
1.4	Government Owned Entity	Meets conditions of ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI – 1.1 and 1.2, with attachments

Eligibility and Qualification Criteria				Compliance Requirements			Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
2. Historical Contract Non-Performance							
2.1	History of Non-Performing Contracts	Non-performance of a contract <sup>1</sup> did not occur as a result of supplier default in the past 5 years.	Must meet requirement <sup>2</sup>	Must meet requirements	Must meet requirement <sup>2</sup>	N/A	Form CON-2
2.2	Suspension Based on Execution of Bid Securing Declaration by the Purchaser or withdrawal of the Bid within Bid validity	Not under suspension based on execution of a Bid Securing Declaration pursuant to ITB 4.4 or withdrawal of a Bid pursuant ITB 19.9.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Letter of Bid
2.3	Pending Litigation	Bidder's financial position and prospective long term profitability sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder	Must meet requirement	N/A	Must meet requirement	N/A	Form CON – 2

<sup>1</sup> Non-performance, as decided by the Purchaser, shall include all contracts where (a) non-performance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Non-performance shall not include contracts where Purchasers decision was overruled by the dispute resolution mechanism. Non-performance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted.

<sup>2</sup> This requirement also applies to contracts executed by the Bidder as JV member.

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
3. Financial Situation and Performance							
3.1	Financial Capabilities	The audited balance sheets or, if not required by the laws of the Bidder's country, other financial statements acceptable to the Purchaser, for the last 3 years shall be submitted and must demonstrate the current soundness of the Bidder's financial position and indicate its prospective long-term profitability.	Must meet requirement	N/A	Must meet requirement	N/A	Form FIN – 3.1, with attachments
3.2	Credit line	Provision for a credit line equivalent to at least 60 % of the amount of the bid, established by a chartered financial institution	Must meet requirement	N/A	N/A	Must meet requirement	Document issued by the Bank of the Bidder confirming its agreement to make available to the bidder liquidity facilities in the form of line of credit.
3.3	Average Turnover	Minimum average annual turnover of at least 30% of the proposed bid amount, calculated as follows : total certified payments received for contracts in progress and/or completed within the last 3 years, divided by 3	Must meet requirement	Must meet requirement			Form FIN – 3.2

Eligibility and Qualification Criteria				Compliance Requirements			Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
4. Experience							
4.1	Experience in cereals supply and delivery	Must have supplied annual volumes of cereals equivalent to at least <ul style="list-style-type: none"><li>- 50% of the volume proposed in the bid for white maize</li><li>- 30% of the volume proposed in the bid for white sorghum, millet and white rice.</li></ul> This criteria will be considered for each type of cereals (White maize, millet, white sorghum, white rice) The following period will be considered: from January 1 <sup>st</sup> 2013 to the bid submission deadline.	Must meet requirement <sup>3</sup>	Must meet requirement <sup>4</sup>	N/A	N/A	Form EXP 4.1 Along with the following supporting documents: contract/purchase orders AND related proof of completion (copies of delivery notes or certificate of execution issued by clients that clearly mention, among others, the type of cereals, period of execution, quantity and amount )

<sup>3</sup> For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder's share, by value, shall be considered to meet this requirement.

<sup>4</sup> In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

### 3. Domestic Preference (ITB 33)

If the Bidding Data Sheet so specifies, the Purchaser will grant a margin of preference to goods manufactured in the Purchaser's country for the purpose of bid comparison, in accordance with the procedures outlined in subsequent paragraphs.

Bids will be classified in one of three groups, as follows:

- (a) **Group A:** Bids offering goods manufactured in the Purchaser's Country, for which (i) labor, raw materials, and components from within the Purchaser's Country account for more than thirty (30) percent of the EXW price; and (ii) the production facility in which they will be manufactured or assembled has been engaged in manufacturing or assembling such goods at least since the date of bid submission.
- (b) **Group B:** All other bids offering Goods manufactured in the Purchaser's Country.
- (c) **Group C:** Bids offering Goods manufactured outside the Purchaser's Country that have been already imported or that will be imported.

To facilitate this classification by the Purchaser, the Bidder shall complete whichever version of the Price Schedule furnished in the Bidding Documents is appropriate provided, however, that the completion of an incorrect version of the Price Schedule by the Bidder shall not result in rejection of its bid, but merely in the Purchaser's reclassification of the bid into its appropriate bid group.

The Purchaser will first review the bids to confirm the appropriateness of, and to modify as necessary, the bid group classification to which bidders assigned their bids in preparing their Bid Forms and Price Schedules.

All evaluated bids in each group will then be compared to determine the lowest evaluated bid of each group. Such lowest evaluated bids shall be compared with each other and if as a result of this comparison a bid from Group A or Group B is the lowest, it shall be selected for the award.

If, as a result of the preceding comparison, the lowest evaluated bid is from Group C, the lowest evaluated bid from Group C bids will then be further compared with the lowest evaluated bid from Group A, after adding to the evaluated bid price of goods offered in the bid for Group C, for the purpose of further comparison only an amount equal to fifteen (15) percent of the CIP (named place of destination) bid price. The lowest-evaluated bid determined from this last comparison shall be selected for the award."

## Section IV. Bidding Forms

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## Letter of Bid

*[The Bidder shall prepare his Letter of Bid on a Letterhead paper specifying his name and address]*

Date: \_\_\_\_\_  
 ICB No.: \_\_\_\_\_  
 Invitation for Bid No.: \_\_\_\_\_  
 Alternative No.: \_\_\_\_\_

To: \_\_\_\_\_

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8) \_\_\_\_\_;
- (b) We have no conflict of interest in accordance with ITB 4;
- (c) We have not been suspended nor declared ineligible by the Purchaser based on execution of a Bid Securing Declaration in the Purchaser's country in accordance with ITB 4.4.
- (d) We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedule specified in the Schedule of Requirements the following Goods: \_\_\_\_\_  
 \_\_\_\_\_;
- (e) The total price of our Bid, excluding any discounts offered in item (f) below is:  
 In case of only one lot, total price of the Bid \_\_\_\_\_  
 In case of multiple lots, total price of each lot \_\_\_\_\_  
 In case of multiple lots, total price of all lots (sum of all lots) \_\_\_\_\_;
- (f) The discounts offered and the methodology for their application are:
  - i) The discounts offered are: \_\_\_\_\_
  - ii) The exact method of calculations to determine the net price after application of discounts is shown below: \_\_\_\_\_;
- (g) Our bid shall be valid for a period of \_\_\_\_\_ days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (h) If our bid is accepted, we commit to obtain a performance security in accordance with ITB 42 of the Bidding Documents;
- (i) We are not participating, as a Bidder or a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.2(e), other than alternative bids submitted in accordance with ITB 13;
- (j) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

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



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*[If none has been paid or is to be paid, indicate "none."]*

- (k) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and
- (l) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (m) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption.

Name of the Bidder\* \_\_\_\_\_

Name of the person duly authorized to sign the Bid on behalf of the Bidder\*\* \_\_\_\_\_

Title of the person signing the Bid \_\_\_\_\_

Signature of the person named above \_\_\_\_\_

Date signed \_\_\_\_\_ day of \_\_\_\_\_

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

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

## Appendix to Letter of Bid

### Statement of Integrity, Eligibility and Social and Environmental Responsibility

Reference name of the Bid :

("Contract")

To:

("Contracting Authority")

1. We recognise and accept that *Agence française de développement* ("AFD") only finances projects of the Contracting Authority subject to its own conditions which are set out in the Financing Agreement which it has entered into with the Contracting Authority. As a matter of consequence, no legal relationship exists between AFD and our company, our joint venture or our subcontractors. The Contracting Authority retains exclusive responsibility for the preparation and implementation of the contract procurement and its subsequent performance.
2. We hereby certify that neither we nor any other member of our joint venture or any of our subcontractors are in any of the following situations:
  - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by the courts, having entered into receivership, reorganisation or being in any analogous situation arising from any similar procedure;
  - 2.2) having been convicted, within the past five years by decision of a court decision, which has the force of *res judicata* in the country where the project is implemented, of one of the acts mentioned in sections 6.1 to 6.4 below or of any other offense committed during the procurement or performance of a contract<sup>5</sup>;
  - 2.3) being listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight-against-terrorist financing or threat to international peace and security;
  - 2.4) having committed serious professional misconduct within the past five years during the procurement or performance of a contract;
  - 2.5) not having fulfilled our obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of either the country where we are established or the Contracting Authority's country;
  - 2.6) having been convicted, within the past five years by a court decision, which has the force of *res judicata*, of one of the acts mentioned in sections 6.1 to 6.4 below or of any other offense committed during the procurement or performance of an AFD-financed contract;
  - 2.7) being subject to an exclusion decision of the World Bank since 30 May 2012, and being listed on the website <http://www.worldbank.org/debarr><sup>6</sup>;
  - 2.8) having committed misrepresentation in documentation requested by the Beneficiary as part of the contract procurement procedure.
3. We hereby certify that neither we, nor any of the members of our joint venture or any of our subcontractors are in any of the following situations of conflict of interest:

<sup>5</sup> In the event of such conviction, you may attach to this Statement of Integrity supporting information showing that this conviction is not relevant in the context of this AFD-financed contract.

<sup>6</sup> In the event of such exclusion, you may attach to this Statement of Integrity supporting information showing that this exclusion is not relevant in the context of this AFD-financed contract.

- 3.1) being an affiliate controlled by the Contracting Authority or a shareholder controlling the Contracting Authority, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
- 3.2) having a business or family relationship with a Contracting Authority's staff involved in the selection procedure or the supervision of the resulting contract, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;
- 3.3) being controlled by or controlling another bidder or being under common control with another bidder, or receiving from or granting subsidies directly or indirectly to another bidder, having the same legal representative as another bidder, maintaining direct or indirect contacts with another bidder which allows us to have or give access to information contained in the respective bids, influencing them or influencing decisions of the Contracting Authority;
- 3.4) being engaged in a consultancy activity, which, by its nature, may be in conflict with the assignments that we would carry out for the Contracting Authority;
- 3.5) in the case of a works or goods procurement procedure:
  - i. having prepared or having been associated with a consultant who prepared specifications, drawings, calculations and other documentation that are subject of the bid;
  - ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this contract;
4. If we are a government-owned entity, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of the Contracting Authority, which will inform AFD, any change in situation with regard to points 2 to 4 here above.
6. In the context of procurement and performance of the contract:
  - 6.1) We have not and we will not engage in any dishonest conduct (act or omission) deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate someone's consent, to make them circumvent legal or regulatory requirements and/or to violate their internal rules in order to obtain illegitimate profit.
  - 6.2) We have not and we will not engage in any dishonest conduct (act or omission) contrary to our legal or regulatory obligations or our internal rules in order to obtain illegitimate profit.
  - 6.3) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to (i) any person who holds a legislative, executive, administrative or judicial mandate within the State of the Contracting Authority regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies, (ii) any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service, or (iii) any other person defined as a public officer by the national laws of the Contracting Authority, an undue advantage of any kind, for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity.
  - 6.4) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to any private person who occupies an executive position in a private sector entity or works for such an entity, regardless of the nature of his/her capacity, any undue advantage of any kind, for himself or another person or entity for such private person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations.

- 6.5) We have not and we will not engage in any practice likely to influence the contract award process to the detriment of the Contracting Authority and, in particular, in any anti-competitive practice having for object or for effect to prevent, restrict or distort competition, namely by limiting access to the market or the free exercise of competition by other undertakings.
- 6.6) Neither we nor any of the members of our joint venture or any of our subcontractors shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or France.
- 6.7) We commit ourselves to comply with and ensure that all of our subcontractors comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the contract, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties,. Moreover, we shall implement environmental and social risks mitigation measures such as specified in the environmental and social management plan or, if appropriate, in the environmental and social impact assessment notice provided by the Contracting Authority.
7. We, as well as members of our joint venture and our subcontractors authorise AFD to inspect accounts, records and other documents relating to the procurement and performance of the Contract and to have them audited by auditors appointed by AFD.

Name: \_\_\_\_\_ In the capacity of \_\_\_\_\_  
Signature: \_\_\_\_\_  
Duly empowered to sign the bid in the name and on behalf of<sup>7</sup> \_\_\_\_\_

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<sup>7</sup> In case of joint venture, insert the name of the joint venture. The person who will sign the bid on behalf of the bidder shall attach a power of attorney from the bidder.

## Form ELI-1.1: Bidder Information Form

Date: \_\_\_\_\_  
ICB No. and title: \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_ pages

Bidder's name
In case of Joint Venture (JV), name of each member:
Bidder's actual or intended country of registration: <i>[indicate country of Constitution]</i>
Bidder's actual or intended year of incorporation:
Bidder's legal address [in country of registration]:
Bidder's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1. <input type="checkbox"/> In case of Government-owned enterprise or institution, in accordance with ITB 4.3 documents establishing: <ul style="list-style-type: none"> <li>• Legal and financial autonomy</li> <li>• Operation under commercial law</li> <li>• Establishing that the Bidder is not dependent agency of the Purchaser</li> </ul> 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## Form ELI-1.2: Bidder's JV Information Form

*(to be completed for each member of Bidder's JV)*

Date: \_\_\_\_\_  
ICB No. and title: \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_ pages

Bidder's JV name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above.  <input type="checkbox"/> In case of a Government-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and absence of dependent status, in accordance with ITB 4.3.  2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

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

*(to be completed by the Bidder and by each member of the Bidder's JV)*

Bidder's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

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

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

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> Contract non-performance did not occur since 1 <sup>st</sup> January <i>[insert current year number less 5]</i> specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.			
<input type="checkbox"/> Contract(s) not performed since 1 <sup>st</sup> January <i>[insert current year number less 5]</i> specified in Section III, Evaluation and Qualification Criteria, requirement 2.1			
Year	Non- performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Purchaser: <i>[insert full name]</i> Address of Purchaser: <i>[insert street/city/country]</i> Reason(s) for non-performance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
Pending Litigation, in accordance with Section III, Qualification Criteria and Requirements			
<input type="checkbox"/> No pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.3.			
<input type="checkbox"/> Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.			

<b>Year of dispute</b>	<b>Amount in dispute (currency)</b>	<b>Contract Identification</b>	<b>Total Contract Amount (currency), Euro Equivalent (exchange rate)</b>
		Contract Identification: _____ Name of Purchaser: _____ Address of Purchaser: _____ Matter in dispute: _____ Party who initiated the dispute: _____  Status of dispute: _____	



## Form FIN-3.1: Financial Situation and Performance

Bidder's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

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

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

### 1. Financial data

Type of Financial information in (currency)	Historic information for previous _____ years, (amount in currency, currency, exchange rate*, Euro equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

\*Refer to ITB 15 for the exchange rate

### 2. Financial documents

The Bidder and its parties shall provide copies of financial statements for \_\_\_\_\_ years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

- (a) reflect the financial situation of the Bidder or in case of JV member , and not an affiliated entity (such as parent company or group member).
- (b) be independently audited or certified in accordance with local legislation.
- (c) be complete, including all notes to the financial statements.
- (d) correspond to accounting periods already completed and audited.

☐ Attached are copies of financial statements<sup>8</sup> for the \_\_\_\_\_ years required above and complying with the requirements

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<sup>8</sup> If the most recent set of financial statements is for a period earlier than 12 months from the date of bid, the reason for this should be justified.

## Form FIN-3.2: Average Annual Turnover

Bidder's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

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

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

		Annual turnover data	
Year	Amount Currency	Exchange rate	Euro equivalent
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>		
Average Annual Turnover *			

\* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

## Form EXP-4.1: Experience

Bidder's Legal Name: \_\_\_\_\_

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

JV Partner's Legal Name: \_\_\_\_\_

ICB No.: \_\_\_\_\_

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

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

## Form EXP – 4.1 (cont.) Experience (cont.)

Bidder's Legal Name: \_\_\_\_\_

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

JV Partner's Legal Name: \_\_\_\_\_

<b>Similar Contract No. ____ [insert specific number] of [total number of contracts] ____ required</b>	<b>Information</b>
Description of the similarity in accordance with Sub-Factor 4.1 or 4.2 of Section III:	
Amount	_____
Physical size	_____
Complexity	_____
Methods/Technology	_____
Other Characteristics	_____

## Price Schedule Forms

*[The Bidder shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Price Schedules** shall coincide with the List of Goods and Related Services specified by the Purchaser in the Schedule of Requirements.]*

**Price Schedule: Goods Manufactured Outside the Purchaser's Country, to be Imported**

Lot N°:.....

(Group C bids, goods to be imported)						Date: _____		
Currencies in accordance with ITB Sub-Clause 15						ICB No: _____		
						Alternative No: _____		
						Page N° _____ of _____		
1	2	3	4	5	6	9		
<b>Sub lot N°</b>	<b>Description of Goods</b>	<b>Country of Origin</b>	<b>Delivery Date as defined by Incoterms</b>	<b>Quantity and physical unit</b>	<b>Unit price CIP <i>[insert place of destination]</i> in accordance with ITB 14.8(b)(i)</b>	<b>Total Price CIP</b>		
<i>[insert number of the Sub lot]</i>	<i>[insert name of good]</i>	<i>[insert country of origin of the Good]</i>	<i>[insert quoted Delivery Date]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price CIP per unit]</i>			<i>[insert total price of the line item]</i>
<b>Total Price</b>								

### Cost of road transportation and unloading in Purchaser's warehouse

**Note:** the site of storage will be specified before contract signature. Bidder shall strictly follow the template below.

Bidder shall give the transportation and unloading cost in the table below for each sub lot he bid for.

#### LOT

Name of Bidder *[insert complete name of Bidder]* Signature of Bidder *[signature of person signing the Bid]* Date *[Insert Date]*

	1	2	3	4	5	6	7	8
Sub lot number	Place of departure (country and city)	Country of delivery	Quantity (ton)	Price per ton (from city of departure to the purchaser's store)	Transport total Price	Unlaoding Price per ton	Total unlaoding price	Total price for transportation and unloading
<i>[insert the sub lot number]</i>	<i>[insert the country and city of departure]]</i>	<i>The bidder shall provide the cost of delivery for each country and city of the Sub area</i>		<i>Insert the corresponding price per place of delivery. This prices shall include all type of transportation costs</i>		<i>[insert unlaoging cost in Purchaser stores]</i>		
Sub lot N°		<b>Mali (Sikasso)</b>						
.....		<b>Mali (Koutiala)</b>						
		<b>Mali (Ségou)</b>						

Name of Bidder *[insert complete name of Bidder]* Signature of Bidder *[signature of person signing the Bid]* Date *[Insert Date]*



## Price Schedule: Goods Manufactured Outside the Purchaser's Country, Already Imported

(Group C bids, Goods already imported)  Currencies in accordance with ITB Sub-Clause 15						Date: _____ ICB No: _____ Alternative No: _____ Page N° _____ of _____
1	2	3	4	5	6	
Line Item N°	Description of Goods	Country of Origin	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit Price net of custom duties and import taxes,	Total Price net of custom duties and import taxes
<i>[insert number of the item]</i>	<i>[insert name of Goods]</i>	<i>[insert country of origin of the Good]</i>	<i>[insert quoted Delivery Date]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price net of custom duties and import taxes]</i>	<i>[insert total price per line item]</i>

Total Bid Price	
-----------------	--

### Cost of road transportation and unloading in Purchaser's warehouse

**Note:** the site of storage will be specified before contract signature. Bidder shall strictly follow the template below.

Bidder shall give the transportation and unloading cost in the table below for each sub lot he bid for.

#### LOT

	1	2	3	4	5	6	7	8
Sub lot number	Place of departure (country and city)	Country of delivery	Quantity (ton)	Price per ton (from city of departure to the purchaser's store)	Transport total Price	Unlaoding Price per ton	Total unlaoding price	Total price for transportation and unloading
<i>[insert the sub lot number]</i>	<i>[insert the country and city of departure]]</i>	<i>The bidder shall provide the cost of delivery for each country and city of the Sub area</i>		<i>Insert the corresponding price per place of delivery. This prices shall include all type of transportation costs</i>		<i>[insert unlaoging cost in Purchaser stores]</i>		
Sub lot N°		<b>Mali (Sikasso)</b>						
.....		<b>Mali (Koutiala)</b>						
		<b>Mali (Ségou)</b>						

Name of Bidder *[insert complete name of Bidder]* Signature of Bidder *[signature of person signing the Bid]* Date *[Insert Date]*

## Price Schedule: Goods Manufactured in the Purchaser's Country

	Purchaser's Country _____					(Group A and B bids)  Currencies in accordance with ITB Sub-Clause 15		Date: _____ ICB No: _____ Alternative No: _____ Page N° _____ of _____
1	2	3	4	5	6			
Line Item N°	Description of Goods	Country of Origin	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price EXW		Total EXW price	
<i>[insert number of the item]</i>	<i>[insert name of Good]</i>	<i>[insert country of origin of the Good]</i>	<i>[insert quoted Delivery Date]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert EXW unit price]</i>		<i>[insert total EXW price per line item]</i>	
							Total Price	

**Cost of road transportation and unloading in Purchaser's warehouse**

**Note:** the site of storage will be specified before contract signature. Cost of road transportation will be calculated based on the information to be provided by the bidder in the table below.

**Cost of road transportation and unloading in Purchaser's warehouse**

**Note:** the site of storage will be specified before contract signature. Bidder shall strictly follow the template below.

Bidder shall give the transportation and unloading cost in the table below for each sub lot he bid for.

**LOT**

Name of Bidder *[insert complete name of Bidder]* Signature of Bidder *[signature of person signing the Bid]* Date *[Insert Date]*

	1	2	3	4	5	6	7	8
Sub lot number	Place of departure (country and city)	Country of delivery	Quantity (ton)	Price per ton (from city of departure to the purchaser's store)	Transport total Price	Unlaoding Price per ton	Total unlaoding price	Total price for transportation and unloading
<i>[insert the sub lot number]</i>	<i>[insert the country and city of departure]]</i>	<i>The bidder shall provide the cost of delivery for each country and city of the Sub area</i>		<i>Insert the corresponding price per place of delivery. This prices shall include all type of transportation costs</i>		<i>[insert unlaoging cost in Purchaser stores]</i>		
Sub lot N°		<b>Mali (Bamako)</b>						
.....		<b>Mali (Koutiala)</b>						
		<b>Mali (Ségou)</b>						

## **Price and Completion Schedule - Related Services**

**Not applicable**

## Form of Bid Security (Bank Guarantee)

*[The bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]*

\_\_\_\_\_

**Beneficiary:** \_\_\_\_\_

**Invitation for Bids No:** \_\_\_\_\_

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

**BID GUARANTEE No.:** \_\_\_\_\_

**Guarantor:** \_\_\_\_\_

We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the execution of \_\_\_\_\_ under Invitation for Bids No. \_\_\_\_\_ ("the IFB").

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

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_) upon receipt by us of the Beneficiary's first demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

- (a) has withdrawn its Bid during the period of bid validity set forth in the Applicant's Letter of Bid ("the Bid Validity Period"), or any extension thereto provided by the Applicant; or
- (b) having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the performance security,, in accordance with the Instructions to Bidders ("ITB") of the Beneficiary's bidding document.

This guarantee will expire: (a) if the Applicant is the successful bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the performance security issued to the Beneficiary in relation to such contract agreement; or (b) if the Applicant is not the successful bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the bidding process; or (ii) twenty-eight days after the end of the Bid Validity Period.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

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*[signature(s)]*

## Section V. Eligibility Criteria and Social and Environmental responsibility

### Eligibility in AFD-Financed Procurement

1. The Support Project to the Regional Food Security Reserve in West Africa is totally funded by the European Union. The Article 10.5 of Annex 2 "General Conditions" of the Delegation Agreement between EU and AFD provides that, unless waived, supplies must come from EU or eligible countries under the 10th EDF.

The revised Annex IV to the Cotonou Agreement harmonised to the extent possible the rules on nationality and origin with those of the CIR. Participation is open to international organisations and to all natural persons who are nationals of, or legal persons who are established in :

- an ACP State.
- an EU Member State,
- Member States of the European Economic Area
- Beneficiaries of the EU Instrument for pre-accession assistance (IPA II),
- Overseas countries and territories covered by Council Decision 2013/755/EU of 25 November 2013;
- developing countries and territories, as included in the OECD-DAC list of ODA recipients, which are not members of the G-20 group, without prejudice to the status of the Republic of South Africa, as governed by Protocol 3 to the Cotonou Agreement;
- another third country, based on a European Commission decision establishing reciprocal access to external aid in agreement with ACP countries;
- OECD members in case of activities implemented in the Least Developed Countries (LDC) and in Heavily Indebted Poor Countries (HIPC). This applies for the entirety of regional or global programmes as well which include at least one LDC or HIPC.

The complete list of eligible countries is at the following address:

<http://ec.europa.eu/europeaid/prag/annexes.do?annexName=A2a&lang=en&id=>

2. Natural or legal persons (including all members of a joint venture or any of their subcontractors) shall not be awarded an AFD-financed contract if, on the date of submission of an application or of a bid or on the date of award of a contract, they:
  - i) are bankrupt or being wound up or ceasing their activities, are having their activities administered by the courts, have entered into receivership, or are in any analogous situation arising from a similar procedure;
  - ii) have been convicted within the past five years by court decision, which has the force of *res judicata* in the country where the project is implemented, of fraud or corruption or any other offence committed during the procurement or performance of a contract, unless they provide supporting information together with their Statement of Integrity



- (Form available as Appendix to Letter of Bid) which shows that this conviction is not relevant in the context of this AFD-financed project;
- iii) are listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight against terrorist financing or threat to international peace and security;
  - iv) have committed serious professional misconduct within the past five years during the procurement or performance of a contract, as evidenced by any means by the Purchaser;
  - v) have not fulfilled their obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of the country where they are established or the Purchaser's country;
  - vi) have been convicted within the past five years by court decision, which has the force of *res judicata* of fraud or corruption or any other offence committed in the context of an AFD-financed contract procurement or performance ;
  - vii) Are subject to an exclusion decision of the World Bank, since 30 May 2012, and are listed on the website <http://www.worldbank.org/debarr>, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to Letter of Bid) which shows that this exclusion is not relevant in the context of this AFD-financed project
  - viii) have committed misrepresentation in documentation requested by the Purchaser as part of the contract procurement procedure;
3. Bidders that are Government-owned enterprises or institutions may participate only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law. To be eligible, a government-owned enterprise or institution shall establish to the Agency's satisfaction, through all relevant documents, including its Charter and other information the Agency may request, that it: (i) is a legal entity separate from their government (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.
4. In order to promote sustainable development, AFD seeks to ensure that internationally recognised environmental and social standards are complied with. Candidates for AFD-financed contracts shall consequently undertake in the Statement of Integrity to:
- i) comply with and ensure that all their subcontractors comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the Project, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties;
  - ii) adopt any environmental and social risk mitigations measures as defined in the environmental and social management plan or in the environmental and social impact notice issued by the Purchaser.

## Section VI. Agency Policy - Corrupt and Fraudulent Practices

The Purchaser, the Implementing Agency and the contractors, suppliers or consultants must observe the highest standard of ethics during contract procurement and performance.

By signing the Statement of Integrity (form available as Appendix to Bid Submission Form) the contractor, supplier or consultant declares that (i) *"it did not engage in any practice likely to influence the contract award process to the Purchaser's detriment, and that it did not and will not get involved in any anti-competitive practice"*, and that (ii) *"the negotiation, the procurement and the performance of the contract did not and shall not give rise to any act of corruption or fraud"*.

Moreover, the Agency requires including in the Bidding Documents and Agency-financed contracts a provision requiring that bidders and contractors, suppliers and consultants will permit the Agency to inspect their accounts and records relating to the procurement and performance of the Agency-financed contract, and to have them audited by auditors appointed by the Agency.

The Agency reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- reject a proposal for a contract award if it is established that during the selection process the bidder that is recommended for the award has been convicted of corruption, directly or by means of an agent, or has engaged in fraud or anti-competitive practices in view of being awarded the Contract;
- declare misprocurement when it is established that, at any time, the Purchaser, the contractor, the supplier, the consultant or its representatives have engaged in acts of corruption, fraud or anti-competitive practices during the contract procurement or performance without the Purchaser having taken appropriate action in due time satisfactory to the Agency to remedy the situation, including by failing to inform the Agency at the time they knew of such practices.

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

(a) Corruption of a public officer means:

- the act of promising, offering or giving to a public officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity; or
- the act by which a public officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity.

(b) A *"public officer"* shall be construed as meaning:

- any person who holds a legislative, executive, administrative or judicial mandate (within the State of the Purchaser) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;
- any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;

- any other person defined as a public officer by the national laws of the Purchaser.
- (c) Corruption of a private person means:
- the act of promising, offering or giving to any person other than a public officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or
  - the act by which any person other than a public officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations.
- (d) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.
- (e) Anti-competitive practices means:
- any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply.
  - any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it.
  - any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

## **PART 2 – Supply Requirements**

## Section VII. Schedule of Requirements

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## 1. List of Goods and Delivery Schedule

**Lot -Western Atlantic Sub-area : Senegal/Gambia/Guinea Bissau/Cape Verde**

Line Item N°	Description of Goods	Quantity	Physical unit	Final (Project Site) Destination as specified in BDS	Delivery (as per Incoterms) Date		
					Earliest Delivery Date	Latest Delivery Date	Bidder's offered Delivery date [ <i>to be provided by the bidder</i> ]
Sub Lot 3.1	white maize	151.2	Tons	Mali (Sikasso and/or Ségou and/or Koutiala)	Thirty (30) days	Forty five (45) days	[insert number of days after Contract signature date]
Sub Lot 3.2	White Sorghum	189	Tons				
Sub Lot 3.3	Millet	189	Tons				
Sub Lot 3.4	White rice	226.8	Tons				

## **2. List of Related Services and Completion Schedule**

Not applicable

### 3. Technical Specifications

#### 3.1 Goods Specifications

Goods	General characteristic	Specifications
<b>white maize</b>  <b>Agricultural campaign : 2018/2019</b>	Good quality Healthy and fit for human consumption	<ul style="list-style-type: none"> <li>- Organoleptic : naturel state, smell and colour</li> <li>- Moisture : 11% maximum</li> <li>- Organic matter : 1% maximum</li> <li>- Inorganic matter : 0,5% maximum</li> <li>- Pest damage grains: 2% maximum</li> <li>- Broken grains : 1% maximum</li> <li>- Rotten grains : 0%</li> <li>- Aflatoxins (B1+B2+G1+G2): 20 ppb maximum</li> <li>- Live insect : 0%</li> <li>- Dead insects: 8 dead insects per Kg maximum</li> <li>- Heavy Metals : be free from heavy metals in amounts which may represent a hazard to health</li> <li>- To be obtained from non-genetically modified varieties (NO GMO)</li> <li>- Free from any trace of trogoderma and prostephanus</li> </ul>
<b>WhiteSorghum –</b>  <b>Agricultural campaign: 2018/2019</b>	Good quality Healthy and fit for human consumption	<ul style="list-style-type: none"> <li>- Organoleptic : naturel state, smell and colour</li> <li>- Moisture : 11% maximum</li> <li>- Organic matter : 1% maximum</li> <li>- Inorganic matter : 0,5% maximum</li> <li>- Pest damage grains: 2% maximum</li> <li>- Broken grains : 1% maximum</li> <li>- Rotten grains : 0%</li> <li>- Aflatoxins (B1+B2+G1+G2): 20 ppb maximum</li> <li>- Ochratoxin A : 5ppb maximum</li> <li>- Live insect : 0%</li> <li>- Dead insects: 0,1 % maximum</li> <li>- Heavy Metals : be free from heavy metals in amounts which may represent a hazard to health.</li> <li>- To be obtained from non-genetically modified varieties (NO GMO)</li> <li>- Free from any trace of trogoderma and prostephanus</li> </ul>
<b>Millet</b>  <b>Agricultural campaign :2018/2019</b>	Good quality Healthy and fit for human consumption	<ul style="list-style-type: none"> <li>- Organoleptic : naturel state, smell and colour</li> <li>- Moisture : 11% maximum</li> <li>- Organic matter : 1% maximum</li> <li>- Inorganic matter : 0,5% maximum</li> <li>- Pest damage grains : 2% maximum</li> <li>- Broken grains : 1% maximum</li> <li>- Rotten grains : 0%</li> <li>- Aflatoxins (B1+B2+G1+G2): 20 ppb maximum</li> <li>- Ochratoxin A : 5ppb maximum</li> <li>- Live insect : 0%</li> </ul>



		<ul style="list-style-type: none"> <li>- Heavy Metals : be free from heavy metals in amounts which may represent a hazard to health.</li> <li>- Live insect : 0%</li> <li>- Dead insects: 0,1 % maximum</li> <li>- To be obtained from non-genetically modified varieties (NO GMO)</li> <li>- Free from any trace of trogoderma and prostephanus</li> </ul>
<b>White rice</b> <b>Agricultural campaign</b> <b>:2018/2019</b>	Good quality Healthy and fit for human consumption	<ul style="list-style-type: none"> <li>- Organoleptic : naturel state, smell and colour</li> <li>- Moisture : 13% maximum</li> <li>- Organic matter : 0,5 % maximum</li> <li>- Inorganic matter : 0,1% maximum</li> <li>- Broken kernels : 35% maximum</li> <li>- Damage kernels : 1% maximum</li> <li>- Paddy kernels: 15 grains/Kg maximum</li> <li>- Grains moisiss : 00%</li> <li>- Ochratoxin A : 5 ppb maximum</li> <li>- Live insect : 0%</li> <li>- Heavy Metals : be free from heavy metals in amounts which may represent a hazard to health.</li> <li>- To be obtained from non-genetically modified varieties (NO GMO)</li> <li>- Free from any trace of trogoderma and prostephanus</li> </ul>

### 3.2 Packaging

- **Packaging:** The products shall be packed using new bags, clean and double machine sewing , and guaranteed free from pesticides treatment.. Packaging shall be made in polypropylene bags. Suppliers must deliver 2% more empty bags.
- **Packing:** The packing is 50 kilograms net
- **Labelling:** package printing shall be industrial manufacturing. In addition to meeting labelling standards, packages must bear letters grouped on the same side, readable and indelibly marked and visible from the outside, with the information and logo below:



- The label shall be approved by ARAA/RAAF before mass production

#### **4. Inspections and Tests**

The following inspections and tests shall be performed:

- Quality and quantity control in the supplier premises, before transportation.
- compliance with hygiene standards before transportation
- Quantity control at the entrance of the purchaser's store
- Quality control on product samples taken at delivery.

The checks shall be carried out by a specialized entity recruited by the Purchaser. The check done by the buyer before the delivery does not guarantee the acceptance of the products. Formal control will be done at the doors of the buyer's stores. The bidder (s) whose bid (s) bear the responsibility of products compliance

## **PART 3 - Contract**

## **Section VIII. General Conditions of Contract**

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## Section VIII. General Conditions of Contract

- |    |                           |  |
|----|---------------------------|--|
| 1. | <b>Definitions</b>        | <p>1.1 The following words and expressions shall have the meanings hereby assigned to them:</p> <ul style="list-style-type: none"> <li>(a) "Agency" means the Agence Française de Développement.</li> <li>(b) "Contract" means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.</li> <li>(c) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.</li> <li>(d) "Contract Price" means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.</li> <li>(e) "Day" means calendar day.</li> <li>(f) "Completion" means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.</li> <li>(g) "GCC" means the General Conditions of Contract.</li> <li>(h) "Goods" means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.</li> <li>(i) "Purchaser's Country" is the country specified in the Special Conditions of Contract (SCC).</li> <li>(j) "Purchaser" means the entity purchasing the Goods and Related Services, as specified in the <b>SCC</b>.</li> <li>(k) "Related Services" means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract.</li> <li>(l) "SCC" means the Special Conditions of Contract.</li> <li>(m) "Subcontractor" means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.</li> <li>(n) "Supplier" means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement.</li> <li>(o) "The Project Site," where applicable, means the place named in the <b>SCC</b>.</li> </ul> |
| 2. | <b>Contract Documents</b> | <p>2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative,</p>  |

- complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.
- 3. Fraud and Corruption** 3.1 The Agency requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Appendix 1 to the SCC
- 4. Interpretation** 4.1 If the context so requires it, singular means plural and vice versa.
- 4.2 Incoterms
- (a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
- (b) The terms EXW, CIP and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the **SCC** and published by the International Chamber of Commerce in Paris, France.
- 4.3 Entire Agreement
- The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.
- 4.4 Amendment
- No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.
- 4.5 Nonwaiver
- (a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.
- 4.6 Severability
- If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.
- 5. Language** 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the **SCC**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.



- |  |      |  |
|--|------|--|
|  | 5.2  | The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.  |
| <b>6. Joint Venture, Consortium or Association</b> | 6.1  | If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.   |
| <b>7. Eligibility</b>                              | 7.1  | All Goods and Related Services to be supplied under the Contract and financed by the Agency shall have their origin in any eligible source as specified in the <b>SCC</b> . For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.   |
| <b>8. Notices</b>                                  | 8.1  | Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the <b>SCC</b> . The term "in writing" means communicated in written form with proof of receipt.   |
|  | 8.2  | A notice shall be effective when delivered or on the notice's effective date, whichever is later.  |
| <b>9. Governing Law</b>                            | 9.1  | The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser's Country, unless otherwise specified in the <b>SCC</b> .   |
| <b>10. Settlement of Disputes</b>                  | 10.1 | The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.   |
|  | 10.2 | If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure <b>specified in the SCC</b> . |
|  | 10.3 | Notwithstanding any reference to arbitration herein,   |
|  | (a)  | the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and   |
|  | (b)  | the Purchaser shall pay the Supplier any monies due the Supplier.  |
| <b>11. Inspections and Audit by the Agency</b>     | 11.1 | The Supplier shall keep, and shall make all reasonable efforts to cause its Subcontractors to keep accurate and systematic accounts and records, in respect of the Goods in such form and details as will clearly identify relevant time changes and costs.  |
|  | 11.2 | The Supplier shall permit, and shall cause its Subcontractors and consultants to permit, the Agency and/or persons appointed by the Agency to inspect the Supplier's offices and all accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the Agency if requested by the Agency.   |

- |     |                                    |      |   |
|-----|------------------------------------|------|---|
| 12. | <b>Scope of Supply</b>             | 12.1 | The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.  |
| 13. | <b>Delivery and Documents</b>      | 13.1 | Subject to GCC Sub-Clause 33.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the <b>SCC</b> .  |
| 14. | <b>Supplier's Responsibilities</b> | 14.1 | The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.  |
| 15. | <b>Contract Price</b>              | 15.1 | Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorized in the <b>SCC</b> .  |
| 16. | <b>Terms of Payment</b>            | 16.1 | The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the <b>SCC</b> .   |
|     |                                    | 16.2 | The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 13 and upon fulfillment of all other obligations stipulated in the Contract.  |
|     |                                    | 16.3 | Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it.   |
|     |                                    | 16.4 | The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the bid price is expressed.  |
|     |                                    | 16.5 | In the event that the Purchaser fails to pay the Supplier any payment by its due date or within the period set forth in the <b>SCC</b> , the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the <b>SCC</b> , for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award. |
| 17. | <b>Taxes and Duties</b>            | 17.1 | For goods manufactured outside the Purchaser's Country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's Country.  |
|     |                                    | 17.2 | For goods manufactured within the Purchaser's country, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.  |
|     |                                    | 17.3 | If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser's Country as specified in the <b>SCC</b> , the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.  |
| 18. | <b>Performance Security</b>        | 18.1 | The Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the <b>SCC</b> .   |

- 18.2 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 18.3 The Performance Security shall be denominated in the currency(ies) of the Contract, or in a freely convertible currency acceptable to the Purchaser; and shall be in one of the format stipulated by the Purchaser in the **SCC**, or in another format acceptable to the Purchaser.
- 18.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.
- 19. Copyright**
- 19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.
- 20. Confidential Information**
- 20.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.
- 20.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the performance of the Contract.
- 20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:
- (a) the Purchaser or Supplier need to share with the Agency or other institutions participating in the financing of the Contract;
  - (b) now or hereafter enters the public domain through no fault of that party;
  - (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

- 20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.
- 21. Subcontracting**
- 21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the bid. Such notification, in the original bid or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.
- 21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.
- 22. Specifications and Standards**
- 22.1 Technical Specifications and Drawings
- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VII, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 33.
- 23. Packing and Documents**
- 23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the **SCC**, and in any other instructions ordered by the Purchaser.
- 24. Insurance**
- 24.1 Unless otherwise specified in the **SCC**, the Goods supplied under the Contract shall be fully insured—in a freely convertible currency from an eligible country—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the **SCC**.
- 25. Transportation**
- 25.1 Unless otherwise specified in the **SCC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

- 25.2 The Supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
  - (d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
  - (e) training of the Purchaser's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.
- 25.3 Prices charged by the Supplier for incidental services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services
- 26. Inspections and Tests**
- 26.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC**.
- 26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Purchaser's Country as specified in the **SCC**. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 26.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.
- 26.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.

- 26.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 26.4.
- 26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.
- 27. Liquidated Damages**
- 27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC**. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 35.
- 28. Warranty**
- 28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 28.2 Subject to GCC Sub-Clause 22.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 28.3 Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 28.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 28.5 Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC**, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.
- 29. Patent Indemnity**
- 29.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement

or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 29.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 29.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 29.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 29.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 29.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

### **30. Limitation of Liability**

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

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| <b>31. Change in Laws and Regulations</b>        | 31.1   | <p>Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.</p>  |
| <b>32. Force Majeure</b>                         | 32.1<br><br>32.2<br><br>32.3                                     | <p>The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.</p> <p>For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.</p> <p>If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.</p>   |
| <b>33. Change Orders and Contract Amendments</b> | 33.1<br><br><br><br><br><br><br><br><br><br>33.2<br><br><br>33.3 | <p>The Purchaser may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:</p> <ul style="list-style-type: none"> <li>(a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;</li> <li>(b) the method of shipment or packing;</li> <li>(c) the place of delivery; and</li> <li>(d) the Related Services to be provided by the Supplier.</li> </ul> <p>If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.</p> <p>Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.</p> |



- 33.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.
- 34. Extensions of Time**
- 34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 27, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.
- 35. Termination**
- 35.1 Termination for Default
- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
- (i) *if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 34;*
- (ii) *if the Supplier fails to perform any other obligation under the Contract;*  
or
- (iii) *if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.*
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.
- 35.2 Termination for Insolvency.
- (a) The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser
- 35.3 Termination for Convenience.
- (a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to

which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

(b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

(i) *to have any portion completed and delivered at the Contract terms and prices; and/or*

(ii) *to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.*

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| <b>36. Assignment</b>         | 36.1 | Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.   |
| <b>37. Export Restriction</b> | 37.1 | Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Purchaser and of the Agency that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Purchaser's convenience pursuant to Sub-Clause 35.3. |

## Section IX. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

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<b>GCC 1.1(i)</b>	The Purchaser's country is: <b>Nigeria</b>
<b>GCC 1.1(j)</b>	The Purchaser is: <b>ECOWAS COMMISSION</b>
<b>GCC 1.1 (o)</b>	The Project Site(s)/Final Destination(s) is/are:  Lot -Western Atlantic Sub-area : Mali (Sikasso and/or Koutiala and/or Ségou).
<b>GCC 4.2</b>	The meaning of the trade terms shall be as prescribed by Incoterms. The version edition of Incoterms shall be Incoterms 2010.
<b>GCC 5.1</b>	The governing and communication language shall be French or English
<b>GCC 7.1</b>	Goods and services from countries under embargo from France, the European Union or the United Nations are not eligible.
<b>GCC 8.1</b>	For <u>notices</u> , the Purchaser's address shall be:  <b>Attn: Mr SALIFOU Ousseini</b> <b>Regional Agency for Agriculture and Food</b> <b>83, rue de la Pâture (SUPER TACO),</b> <b>City : LOME</b> <b>Postal code : 01 BP 4817 Lomé-Togo</b> <b>Country : Togo</b> <b>Phone : 00228 22 21 40 03</b> <b>Email : To <a href="mailto:procurement@araa.org">procurement@araa.org</a> et <a href="mailto:araa@araa.org">araa@araa.org</a>;</b>
<b>GCC 9.1</b>	The governing law shall be the law of: <b>CEDEAO</b>
<b>GCC 10.2</b>	The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows:  <i>[The bidding documents should contain one clause to be retained in the event of a Contract with a foreign Supplier and one clause to be retained in the event of a Contract with a Supplier who is a national of the Purchaser's country. At the time of finalizing the Contract, the respective applicable clause should be retained in the Contract. The following explanatory note should therefore be inserted as a header to GCC 10.2 in the bidding document.</i>  <i>"Clause 10.2 (a) shall be retained in the case of a Contract with a foreign Supplier and clause 10.2 (b) shall be retained in the case of a Contract with a national of the Purchaser's country."]</i>  <b>(a) Contract with foreign Supplier:</b>

	<p><i>[For contracts entered into with foreign suppliers, International commercial arbitration may have practical advantages over other dispute settlement methods. The Agency should not be named as arbitrator, nor should it be asked to name an arbitrator. Among the rules to govern the arbitration proceedings, the Purchaser may wish to consider the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976, the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC).]</i></p> <p><b>If the Purchaser chooses the UNCITRAL Arbitration Rules, the following sample clause should be inserted:</b></p> <p>GCC 10.2—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p><b>If the Purchaser chooses the Rules of ICC, the following sample clause should be inserted:</b></p> <p>GCC 10.2—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.</p> <p><b>(b) Contracts with Supplier national of the Purchaser's country:</b></p> <p>In the case of a dispute between the Purchaser and a Supplier who is a national of the Purchaser's country, the dispute shall be referred to adjudication or arbitration in accordance with the laws of the Purchaser's country.</p>
GCC 13.1	<p><b>For Goods supplied from abroad:</b></p> <p><b>Sample provision (CIP terms)</b></p> <p>Upon shipment, the Supplier shall notify the Purchaser and the Insurance Company by cable or by electronic way previously agreed between parties the full details of the shipment, including Contract number, description of Goods, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. The Supplier shall mail the following documents to the Purchaser, with a copy to the Insurance Company:</p> <ul style="list-style-type: none"> <li>(i) copies of the Supplier's invoice showing Goods' description, quantity, unit price, and total amount;</li> <li>(ii) original and _ copies of the negotiable, clean, on-board bill of lading marked "freight prepaid" and _ copies of nonnegotiable bill of lading;</li> <li>(iii) copies of the packing list identifying contents of each package;</li> <li>(iv) insurance certificate;</li> <li>(v) Manufacturer's or Supplier's warranty certificate;</li> <li>(vi) inspection certificate, issued by the nominated inspection agency, and the Supplier's factory inspection report; and</li> <li>(vii) certificate of origin.</li> </ul> <p>The above documents shall be received by the Purchaser at least one week before arrival of the Goods at the port or place of arrival and, if not received, the Supplier will be responsible for any consequent expenses.</p>

	<p><i>[Other similar documents should be listed, depending upon the Incoterm retained.]</i></p> <p><b>For Goods from within the Purchaser's country:</b></p> <p><b>Sample Provision (EXW term)</b></p> <p>Upon delivery of the Goods to the transporter, the Supplier shall notify the Purchaser and mail the following documents to the Purchaser:</p> <ul style="list-style-type: none"> <li>(i) copies of the Supplier's invoice showing Goods' description, quantity, unit price, and total amount;</li> <li>(ii) delivery note, railway receipt, or truck receipt;</li> <li>(iii) Manufacturer's or Supplier's warranty certificate;</li> <li>(iv) inspection certificate issued by the nominated inspection agency, and the Supplier's factory inspection report; and</li> <li>(v) certificate of origin.</li> <li>(vi) Certificate of fumigation (Fumigation must be done in the delivery shops and at the expense of the supplier)</li> </ul> <p>The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>
<b>GCC 15.1</b>	<p>The prices charged for the Goods supplied and the related Services performed <b>shall not</b> be adjustable.</p>
<b>GCC 16.1</b>	<p><b>Sample provision</b></p> <p>GCC 16.1—The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p><b>Payment for Goods supplied from abroad:</b></p> <p>Payment of foreign currency portion shall be made in (</p> <hr/> <p>) <i>[currency of the Contract Price]</i> in the following manner:</p> <ul style="list-style-type: none"> <li>(i) <b>Advance Payment:</b> Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract, and upon submission of claim and a bank guarantee for equivalent amount valid until the Goods are delivered and in the form provided in the bidding documents or another form acceptable to the Purchaser.</li> <li>(ii) <b>On Shipment:</b> Eighty (80) percent of the Contract Price of the Goods shipped shall be paid [through irrevocable confirmed letter of credit opened in favor of the Supplier in a bank in its country], upon submission of documents specified in GCC Clause 13.</li> <li>(iii) <b>On Acceptance:</b> Ten (10) percent of the Contract Price of Goods received shall be paid within thirty (30) days of receipt of the Goods upon submission of claim supported by the acceptance certificate issued by the Purchaser.</li> </ul> <p>Payment of local currency portion shall be made in <b>XOF or Euro</b> within thirty (30) days of presentation of claim supported by a certificate from the Purchaser declaring that the Goods have been delivered and that all other contracted Services have been performed.</p> <p><b>Payment for Goods and Services supplied from within the Purchaser's country:</b></p>

	<p>Payment for Goods and Services supplied from within the Purchaser's country shall be made in <b>Euros</b> as follows:</p> <p>(i) <b>Advance Payment: Thrity (30)</b> percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract against a simple receipt and a bank guarantee for the equivalent amount and in the form provided in the bidding documents or another form acceptable to the Purchaser.</p> <p>(ii) <b>On Delivery: Seventy (70) percent</b> of the Contract Price shall be paid on receipt of the Goods and upon submission of the documents specified in GCC Clause 13.</p>
<b>GCC 16.1</b>	<p>Payment to the Supplier of the amounts due in each currency shall be made into the following bank accounts:</p> <p><i>[insert bank account details at the time of contract signing]</i></p>
<b>GCC 16.5</b>	<p>The payment-delay period after which the Purchaser shall pay interest to the supplier shall be 90 days.</p> <p>The interest rate for payments in foreign currency that shall be applied is <i>LIBOR + 200 bp</i></p> <p>The interest rate for payments in local currency that shall be applied is: <b>BCEAO rate.</b></p>
<b>GCC 17.3</b>	The following taxes, duties and fees exemptions apply to the Contract: <b>VAT and borders taxes.</b>
<b>GCC 18.1</b>	The amount of the Performance Security shall be: <b>10% of the contract amount.</b>
<b>GCC 18.3</b>	<p>The Performance Security shall be in the form of : <b>chartered financial institution</b></p> <p>The Performance security shall be denominated in <b>the currencies of payment of the Contract, and amount stated as percentage of the contract price.</b></p>
<b>GCC 18.4</b>	Discharge of the Performance Security shall take place: <b>28 days after the contract completion</b>
<b>GCC 23.2</b>	The packing, marking and documentation within and outside the packages shall be: <b>see section IV</b>
<b>GCC 24.1</b>	The insurance coverage shall be as specified in the Incoterms.
<b>GCC 25.1</b>	Responsibility for transportation of the Goods shall be as specified in the Incoterms.
<b>GCC 25.2</b>	Incidental services to be provided are: <b>not applicable</b>
<b>GCC 26.1</b>	<p>The inspections and tests shall be:</p> <p>The following inspections and tests will be performed:</p> <ul style="list-style-type: none"> <li>- Quality and quantity control in the supplier premises, before transportation. (This control is not compulsory and will be in the form of support and does not guarantee the acceptance of the products)</li> <li>- compliance with hygiene standards before transportation</li> <li>- Quantity control at the entrance of the purchaser's store</li> <li>- Quality control on product samples taken at delivery.</li> </ul>

<b>GCC 26.2</b>	The Inspections and tests shall be conducted at see GCC 26.1 of SCC
<b>GCC 27.1</b>	The liquidated damage shall be: <b>0.5%</b> per week
<b>GCC 27.1</b>	The maximum amount of liquidated damages shall be: <b>10%</b>
<b>GCC 28.3</b>	The period of validity of the Warranty shall be: <b>not applicable</b>
<b>GCC 28.5 and GCC 28.6</b>	The period for repair or replacement shall be: <b>30 days</b> .

## Appendix 1 to Special Conditions of Contract - Corrupt and Fraudulent Practices Policy

The Purchaser, the Implementing Agency and the contractors, suppliers or consultants must observe the highest standard of ethics during contract procurement and performance.

By signing the Statement of Integrity (form available as Appendix to Letter of Bid) the contractor, supplier or consultant declares that (i) *"it did not engage in any practice likely to influence the contract award process to the Purchaser's detriment, and that it did not and will not get involved in any anti-competitive practice"*, and that (ii) *"the negotiation, the procurement and the performance of the contract did not and shall not give rise to any act of corruption or fraud"*.

Moreover, the Agency requires including in the Bidding Documents and Agency-financed contracts a provision requiring that bidders and contractors, suppliers and consultants will permit the Agency to inspect their accounts and records relating to the procurement and performance of the Agency-financed contract, and to have them audited by auditors appointed by the Agency.

The Agency reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- a) reject a proposal for a contract award if it is established that during the selection process the bidder that is recommended for the award has been convicted of corruption, directly or by means of an agent, or has engaged in fraud or anti-competitive practices in view of being awarded the Contract;
- b) declare misprocurement when it is established that, at any time, the Purchaser, the contractor, the supplier, the consultant or its representatives have engaged in acts of corruption, fraud or anti-competitive practices during the contract procurement or performance without the Purchaser having taken appropriate action in due time satisfactory to the Agency to remedy the situation, including by failing to inform the Agency at the time they knew of such practices.

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

- (a) Corruption of a public officer means:
  - the act of promising, offering or giving to a public officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity; or
  - the act by which a public officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity.
- (b) A "public officer" shall be construed as meaning
  - any person who holds a legislative, executive, administrative or judicial mandate (within the State of the Purchaser) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;
  - any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;
  - any other person defined as a public officer by the national laws of the Purchaser.



(c) Corruption of a private person means:

- the act of promising, offering or giving to any person other than a public officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or
- the act by which any person other than a public officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations.

(d) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.

(e) Anti-competitive practices means:

- any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply.
- any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it.
- any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

## **Section X. Contract Forms**

### **Table of Forms**

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## Letter of Acceptance

*[letterhead paper of the Purchaser]*

*[date]*

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

Subject: **Notification of Award Contract No.** \_\_\_\_\_

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

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

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

Name and Title of Signatory: \_\_\_\_\_

Name of institution: \_\_\_\_\_

**Attachment: Contract Agreement**

## Contract Agreement

*[The successful Bidder shall fill in this form in accordance with the instructions indicated]*

THIS AGREEMENT made

the *[ insert: **number** ]* day of *[ insert: **month** ], [ insert: **year** ]*.

BETWEEN

- (1) *[ insert complete name of Purchaser ], a [ insert description of type of legal entity, for example, an agency of the Ministry of .... of the Government of { insert name of Country of Purchaser }, or corporation incorporated under the laws of { insert name of Country of Purchaser } ] and having its principal place of business at [ insert address of Purchaser ] (hereinafter called "the Purchaser"), and*
- (2) *[ insert name of Supplier ], a corporation incorporated under the laws of [ insert: country of Supplier ] and having its principal place of business at [ insert: address of Supplier ] (hereinafter called "the Supplier").*

WHEREAS the Purchaser invited bids for certain Goods and ancillary services, viz., *[insert brief description of Goods and Services]* and has accepted a Bid by the Supplier for the supply of those Goods and Services in the sum of *[insert Contract Price in words and figures, expressed in the Contract currency(ies) ]* (hereinafter called "the Contract Price").

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents 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
  - (b) the Letter of Bid and Appendix to Letter of Bid (including the signed Statement of Integrity)
  - (c) the Addenda Nos. \_\_\_\_\_ (if any)
  - (d) Special Conditions of Contract
  - (e) General Conditions of Contract
  - (f) the Specification (including Schedule of Requirements and Technical Specifications)
  - (g) the completed Schedules (including Price Schedules)
  - (h) any other document listed in GCC as forming part of the Contract
3. This Agreement shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the Purchaser to the Supplier as specified in this Agreement, the Supplier hereby covenants with the Purchaser to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

For and on behalf of the Purchaser

Signed: *[insert signature]*

in the capacity of *[ insert title or other appropriate designation ]*

in the presence of *[insert identification of official witness]*

For and on behalf of the Supplier

Signed: *[insert signature of authorized representative(s) of the Supplier]*

in the capacity of *[ insert title or other appropriate designation ]*

in the presence of *[ insert identification of official witness]*

## Performance Security Option 1: Bank Guarantee

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

*[Guarantor letterhead or SWIFT identifier code]*

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

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

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

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

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

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

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

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

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<sup>1</sup>The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup>Insert the date twenty-eight days after the expected completion date as described in GC Clause 18.4. The Purchaser should note that in the event of an extension of this date for completion of the Contract, the Purchaser would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Purchaser might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

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

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*[signature(s)]*

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

## Performance Security

### Option 2: Performance Bond

By this Bond *[insert name of Principal]* as Principal (hereinafter called “the Supplier”) and *[insert name of Surety]* as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[insert name of Purchaser]* as Obligee (hereinafter called “the Supplier”) in the amount of *[insert amount in words and figures]*, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Supplier and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a written Agreement with the Purchaser dated the \_\_\_\_ day of \_\_, 20 \_\_\_\_, for *[name of contract and brief description of Goods and related Services]* in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Supplier shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Supplier shall be, and declared by the Purchaser to be, in default under the Contract, the Purchaser having performed the Purchaser’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or bids from qualified Bidders for submission to the Purchaser for completing the Contract in accordance with its terms and conditions, and upon determination by the Purchaser and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Purchaser and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Purchaser to Supplier under the Contract, less the amount properly paid by Purchaser to Contractor; or
- (3) pay the Purchaser the amount required by Purchaser to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.



Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Purchaser named herein or the heirs, executors, administrators, successors, and assigns of the Purchaser.

In testimony whereof, the Supplier has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

## Advance Payment Security

*[Guarantor letterhead or SWIFT identifier code]*

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

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

**ADVANCE PAYMENT GUARANTEE No.:** *[Insert guarantee reference number]*

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

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

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

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

- (a) has used the advance payment for purposes other than toward delivery of Goods; or
- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety

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<sup>1</sup> *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Purchaser.*

(90) percent of the Accepted Contract Amount, has been certified for payment, or on the *[insert date<sup>9</sup>]*., whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

\_\_\_\_\_  
*[signature(s)]*

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

\_\_\_\_\_  
<sup>9</sup> *Insert the Delivery date stipulated in the Contract Delivery Schedule. The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Purchaser might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for a period not to exceed [six months][one year], in response to the Purchaser's written request for such extension, such request to be presented to us before the expiry of the Guarantee."*