



CIVIL WORKS INVITATION TO BID

ITB No.2017/PROC/UNDP-MMR/062

**For the Provision of Construction and Installation of small-scale water
infrastructure in the Dry Zone of Myanmar
(Shwebo, Monywa, Myingyan, Nyaung U and Chauk)**

**Project: Addressing Climate Change Risks on Water Resources and Food Security
in the Dry Zone of Myanmar**



United Nations Development Programme

June, 2017

Section 1. Letter of Invitation

Myanmar
29 June 2017

Reference # ITB No.2017/PROC/UNDP-MMR/062 For the Provision of Construction and Installation of Small-Scale Water Infrastructure in the Dry Zone of Myanmar (Shwebo, Monywa, Myingyan, Nyaung U and Chauk)

Dear Bidders,

The United Nations Development Programme (UNDP) hereby invites you to submit a Bid to this Invitation to Bid (ITB) for the above-referenced subject.

This ITB includes the following documents:

Section 1 – This Letter of Invitation
Section 2 – Instructions to Bidders (including Data Sheet)
Section 3 – Requirements, Scope of Work and Technical Specifications attached to it the following:

Annex 1 – Number of Units Required in Each Village.

Annex 2 – General Technical Specifications.

Annex 3 – Technical Drawings.

Annex 4 – Technical Specifications for Small Water Infrastructure.

Annex 5 – Technical Specifications for Tube – Wells.

Annex 6 – Maps of Selected Sites.

Annex 7 – Templates for Pumping Tests

Annex 8 – Bill of Quantities for Package A (Sagaing Region _ Shwebo and Monywa)

Annex 9 – Bill of Quantities for Package B (Mandalay Region _ Myingyan and Nyaung U)

Annex 10 – Bill of Quantities for Package C (Magway Region _ Chauk)

Annex 11 – Tentative Gantt Chart (suggested implementation time line)

Section 4 – Bid Submission Form
Section 5 – Documents Establishing the Eligibility and Qualifications of the Bidder.
Section 6 – Technical Bid Form.
Section 7 – Price Schedule Form, please refer to BoQs attached in electronic file.
Section 8 – Form for Performance Security
Section 9 – Contract to be Signed, including General Terms and Conditions

Your offer, comprising of a Technical Bid and Price Schedule, together in a sealed envelope or through a password protected e-mail, should be submitted in accordance with Section 2.

You are kindly requested to submit an acknowledgment letter to UNDP to the following e-mail address:

kyaw.win.htun@undp.org

Also, UNDP would appreciate your indicating the reason for not intending to participate if so; this shall be required for UNDP records only and it does not disqualify companies for participation in future bidding processes.

If you have received this ITB through a direct invitation by UNDP, transferring this invitation to another firm requires your written notification to UNDP of such transfer and the name of the company to whom the invitation was forwarded.

Should you require further clarifications, kindly communicate with the contact person identified in the attached Data Sheet as the focal point for queries on this ITB.

UNDP looks forward to receiving your Bid and thanks you in advance for your interest in UNDP procurement opportunities.

Yours sincerely,

Nasantuya Chuluun,
Operations Manager
UNDP-Myanmar

Section 2: Instruction to Bidders

Definitions

- a) *“Bid”* refers to the Bidder’s response to the Invitation to Bid, including the Bid Submission Form, Technical Bid and Price Schedule and all other documentation attached thereto as required by the ITB.
- b) *“Bidder”* refers to any legal entity that may submit, or has submitted, a Bid for the supply of goods and provision of related services requested by UNDP.
- c) *“Contract”* refers to the legal instrument that will be signed by and between the UNDP and the successful Bidder, all the attached documents thereto, including the General Terms and Conditions (GTC) and the Appendices.
- d) *“Country”* refers to the country indicated in the Data Sheet.
- e) *“Data Sheet”* refers to such part of the Instructions to Bidders used to reflect conditions of the tendering process that are specific for the requirements of the ITB.
- f) *“Day”* refers to calendar day.
- g) *“Civil Works”* refers to all types of civil, mechanical, electrical or other engineering services (other than consulting services) as well as the supply of construction materials and equipment.
- h) *“Government”* refers to the Government of the country where the goods and related services provided/rendered specified under the Contract will be delivered or undertaken.
- i) *“Instructions to Bidders”* refers to the complete set of documents which provides Bidders with all information needed and procedures to be followed in the course of preparing their Bid
- j) *“ITB”* refers to the Invitation to Bid consisting of instructions and references prepared by UNDP for purposes of selecting the best supplier or service provider to fulfil the requirement indicated in the Schedule of Requirements and Technical Specifications.
- k) *“LOI”* (Section 1 of the ITB) refers to the Letter of Invitation sent by UNDP to Bidders.
- l) *“Material Deviation”* refers to any contents or characteristics of the bid that is significantly different from an essential aspect or requirement of the ITB, and (i) substantially alters the scope and quality of the requirements; (ii) limits the rights of UNDP and/or the obligations of the offeror; and (iii) adversely impacts the fairness and principles of the procurement process, such as those that compromise the competitive position of other offerors.
- m) *“Schedule of Requirements and Technical Specifications”* refers to the document included in this ITB as Section 3 which describes the civil works/Services/goods in sufficient detail to identify the

location, nature and any complexities involved and required by UNDP, and other information pertinent to UNDP's receipt and acceptance of the works.

- n) "Services" refers to the entire scope of tasks related or ancillary to the completion or delivery of the civil works required by UNDP under the ITB.
- o) "Supplemental Information to the ITB" refers to a written communication issued by UNDP to prospective Bidders containing clarifications, responses to queries received from prospective Bidders, or changes to be made in the ITB, at any time after the release of the ITB but before the deadline for the submission of Bid.

A. GENERAL

1. UNDP hereby solicits Bids as a response to this Invitation to Bid (ITB). Bidders must strictly adhere to all the requirements of this ITB. No changes, substitutions or other alterations to the rules and provisions stipulated in this ITB may be made or assumed unless it is instructed or approved in writing by UNDP in the form of Supplemental Information to the ITB.
2. Submission of a Bid shall be deemed as an acknowledgement by the Bidder that all obligations stipulated by this ITB will be met and, unless specified otherwise, the Bidder has read, understood and agreed to all the instructions in this ITB.
3. Any Bid submitted will be regarded as an offer by the Bidder and does not constitute or imply the acceptance of any Bid by UNDP. UNDP is under no obligation to award a contract to any Bidder as a result of this ITB.
4. UNDP implements a policy of zero tolerance on proscribed practices, including fraud, corruption, collusion, unethical practices, and obstruction. UNDP is committed to preventing, identifying and addressing all acts of fraud and corrupt practices against UNDP as well as third parties involved in UNDP activities. (See http://www.undp.org/about/transparencycdocs/UNDP_Anti_Fraud_Policy_English_FINAL_june_2011.pdf and http://www.undp.org/content/undp/en/home/operations/procurement/procurement_protest/ for full description of the policies)
5. In responding to this ITB, UNDP requires all Bidders to conduct themselves in a professional, objective and impartial manner, and they must at all times hold UNDP's interests paramount. Bidders must strictly avoid conflicts with other assignments or their own interests, and act without consideration for future work. All Bidders found to have a conflict of interest shall be disqualified. Without limitation on the generality of the above, Bidders, and any of their affiliates, shall be considered to have a conflict of interest with one or more parties in this solicitation process, if they:

5.1 Are, or have been associated in the past, with a firm or any of its affiliates which have been engaged UNDP to provide services for the preparation of the design, Schedule of

Requirements and Technical Specifications, cost analysis/estimation, and other documents to be used for the procurement of the civil works and related services in this selection process;

5.2 Were involved in the preparation and/or design of the programme/project related to the civil works and related services requested under this ITB; or

5.3 Are found to be in conflict for any other reason, as may be established by, or at the discretion of, UNDP.

In the event of any uncertainty in the interpretation of what is potentially a conflict of interest, Bidders must disclose the condition to UNDP and seek UNDP's confirmation on whether or not such conflict exists.

6. Similarly, the following must be disclosed in the Bid:

6.1 Bidders who are owners, part-owners, officers, directors, controlling shareholders, or key personnel who are family of UNDP staff involved in the procurement functions and/or the Government of the country or any Implementing Partner receiving the civil works and related services under this ITB; and

6.4 Others that could potentially lead to actual or perceived conflict of interest, collusion or unfair competition practices.

Failure of such disclosure may result in the rejection of the Bid.

7. The eligibility of Bidders that are wholly or partly owned by the Government shall be subject to UNDP's further evaluation and review of various factors such as being registered as an independent entity, the extent of Government ownership/share, receipt of subsidies, mandate, access to information in relation to this ITB, and others that may lead to undue advantage against other Bidders, and the eventual rejection of the Bid.

8. All Bidders must adhere to the UNDP Supplier Code of Conduct, which may be found at this link: <http://web.ng.undp.org/procurement/undp-supplier-code-of-conduct.pdf>

B. CONTENTS OF BID

9. Sections of Bid

Bidders are required to complete, sign and submit the following documents:

9.1 Bid Submission Cover Letter Form (see ITB Section 4);

9.2 Documents Establishing the Eligibility and Qualifications of the Bidder (see ITB Section 5);

9.3 Technical Bid (see prescribed form in ITB Section 6);

9.4 Price Schedule (see prescribed form in ITB Section 7);

9.5 Bid Security, if applicable (if required and as stated in the DS nos. 9-11, see prescribed Form in ITB Section 8);

9.6 Any attachments and/or appendices to the Bid (including all those specified under the **Data Sheet**)

10. Clarification of Bid

- 10.1 Bidders may request clarification of any of the ITB documents no later than the number of days indicated in the **Data Sheet** (DS no. 16) prior to the Bid submission date. Any request for clarification must be sent in writing via courier or through electronic means to the UNDP address indicated in the **Data Sheet** (DS no. 17). UNDP will respond in writing, transmitted by electronic means and will transmit copies of the response (including an explanation of the query but without identifying the source of inquiry) to all Bidders who have provided confirmation of their intention to submit a Bid.
- 10.2 UNDP shall endeavor to provide such responses to clarifications in an expeditious manner, but any delay in such response shall not cause an obligation on the part of UNDP to extend the submission date of the Bid, unless UNDP deems that such an extension is justified and necessary.

11. Amendment of Bid

- 11.1 At any time prior to the deadline for submission of Bid, UNDP may for any reason, such as in response to a clarification requested by a Bidder, modify the ITB in the form of a Supplemental Information to the ITB. All prospective Bidders will be notified in writing of all changes/amendments and additional instructions through Supplemental Information to the ITB and through the method specified in the **Data Sheet** (DS No. 18).
- 11.2 In order to afford prospective Bidders reasonable time to consider the amendments in preparing their Bid, UNDP may, at its discretion, extend the deadline for submission of Bid, if the nature of the amendment to the ITB justifies such an extension.

C. PREPARATION OF BID

12. Cost

The Bidder shall bear any and all costs related to the preparation and/or submission of the Bid, regardless of whether its Bid was selected or not. UNDP shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the procurement process.

13. Language

The Bid, as well as any and all related correspondence exchanged by the Bidder and UNDP, shall be written in the language (s) specified in the **Data Sheet** (DS No. 4). Any printed literature furnished by the Bidder written in a language other than the language indicated in the **Data Sheet**, must be accompanied by a translation in the preferred language indicated in the **Data Sheet**. For purposes of interpretation of the Bid, and in the event of discrepancy or inconsistency in meaning, the version translated into the preferred language shall govern. Upon conclusion of a contract, the language of the contract shall govern the relationship between the contractor and UNDP.

14. Bid Submission Form

The Bidder shall submit the Bid Submission Form using the form provided in Section 4 of this

ITB.

15. Technical Bid Format and Content

Unless otherwise stated in the **Data Sheet** (DS no. 28), the Bidder shall structure the Technical Bid as follows:

- 15.1 Expertise of Firm/Organization – this section should provide details regarding management structure of the organization, organizational capability/resources, and experience of organization/firm, the list of projects/contracts (both completed and on-going, both domestic and international) which are related or similar in nature to the requirements of the ITB, manufacturing capacity of plant if Bidder is a manufacturer, authorization from the manufacturer of the goods if Bidder is not a manufacturer, and proof of financial stability and adequacy of resources to complete the delivery of goods and provision of related services required by the ITB (see ITB Clause 18 and DS No. 26 for further details). The same shall apply to any other entity participating in the ITB as a Joint Venture or Consortium.
- 15.2 Technical Specifications and Implementation Plan – this section should demonstrate the Bidder's response to the *Statement of Works and Technical Specifications* by identifying the specific components proposed; how each of the requirements shall be met point by point; providing a detailed specification and description of the civil works required, plans and drawings where needed; the essential performance characteristics, identifying the works/portions of the work that will be subcontracted; a list of the major subcontractors, and demonstrating how the bid meets or exceeds the requirements, while ensuring appropriateness of the bid to the local conditions and the rest of the project operating environment during the entire life of the goods provided. Details of technical bid must be laid out and supported by an Implementation Timetable, including Transportation and Delivery Schedule where needed, that is within the duration of the contract as specified in the **Data Sheet** (DS nos. 29 and 30).

Bidders must be fully aware that the *civil works*, goods and related services that UNDP require may be transferred, immediately or eventually, by UNDP to the Government partners, or to an entity nominated by the latter, in accordance with UNDP's policies and procedures. All bidders are therefore required to submit the following in their bids:

- a) A statement of whether any import or export licences are required in respect of the goods to be purchased or services to be rendered, including any restrictions in the country of origin, use or dual use nature of the goods or services, including any disposition to end users;
 - b) Confirmation that the Bidder has obtained license of this nature in the past, and have an expectation of obtaining all the necessary licenses, should their bid be rendered the most responsive; and
 - c) Complete documentation, information and declaration of any goods classified or may be classified as "Dangerous Goods".
- 15.3 Management Structure and Key Personnel – This section should include the comprehensive curriculum vitae (CVs) of key personnel that will be assigned to support the implementation of the technical bid, clearly defining their roles and responsibilities. CVs should establish

competence and demonstrate qualifications in areas relevant to the requirements of this ITB.

In complying with this section, the Bidder assures and confirms to UNDP that the personnel being nominated are available to fulfil the demands of the Contract during its stated full term. If any of the key personnel later becomes unavailable, except for unavoidable reasons such as death or medical incapacity, among other possibilities, UNDP reserves the right to render the Bid non-responsive. Any deliberate substitution of personnel arising from unavoidable reasons, including delay in the implementation of the project of programme through no fault of the Bidder, shall be made only with UNDP's acceptance of the justification for substitution, and UNDP's approval of the qualification of the replacement who shall be either of equal or superior credentials as the one being replaced.

15.4 Where the **Data Sheet** requires the submission of the Bid Security, the Bid Security shall be included along with the Technical Bid. The Bid Security may be forfeited by UNDP, and reject the Bid, in the event of any or any combination of the following conditions:

- a) If the Bidder withdraws its offer during the period of the Bid Validity specified in the **Data Sheet** (DS no. 11), or;
- b) If the Bid Security amount is found to be less than what is required by UNDP as indicated in the **Data Sheet** (DS no. 9), or;
- c) In the case the successful Bidder fails:
 - i. to sign the Contract after UNDP has awarded it;
 - ii. to comply with UNDP's variation of requirement, as per ITB Clause 35; or
 - iii. to furnish Performance Security, insurances, or other documents that UNDP may require as a condition to rendering effective the contract that may be awarded to the Bidder.

16. Price Schedule

The Price Schedule shall be prepared using the attached standard form (Section 7). It shall list all major cost components associated with the civil works and related services, and the detailed breakdown of such costs. All civil works and services described in the Technical Bid must be priced separately on a one-to-one correspondence. Any output and activities described in the Technical Bid but not priced in the Price Schedule, shall be assumed to be included in the prices of the items or activities, as well as in the final total price of the bid.

17. Currencies

All prices shall be quoted in the currency indicated in the **Data Sheet** (DS no. 15). However, where Bids are quoted in different currencies, for the purposes of comparison of all Bid:

- 17.1 UNDP will convert the currency quoted in the Bid into the UNDP preferred currency, in accordance with the prevailing UN operational rate of exchange on the last day of submission of Bid; and
- 17.2 In the event that the Bid found to be the most responsive to the ITB requirement is quoted

in another currency different from the preferred currency as per **Data Sheet** (DS no. 15), then UNDP shall reserve the right to award the contract in the currency of UNDP's preference, using the conversion method specified above.

18. Documents Establishing the Eligibility and Qualifications of the Bidder

18.1 The Bidder shall furnish documentary evidence of its status as an eligible and qualified vendor, using the forms provided under Section 5, Bidder Information Forms. In order to award a contract to a Bidder, its qualifications must be documented to UNDP's satisfactions. These include, but are not limited to the following:

- a) That, in the case of a Bidder offering to supply civil works, goods and services under the Contract which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorized by the goods' manufacturer or producer to supply the goods in the country of final destination;
- b) That the Bidder has the financial, technical, and production capability necessary to perform the Contract; and
- c) That, to the best of the Bidder's knowledge, it is not included in the UN 1267 List or the UN Ineligibility List, nor in any and all of UNDP's list of suspended and removed vendors.

18.2 Bids submitted by two (2) or more Bidders shall all be rejected by UNDP if they are found to have any of the following:

- a) they have at least one controlling partner, director or shareholder in common; or
- b) any one of them receive or have received any direct or indirect subsidy from the other/s; or
- c) they have the same legal representative for purposes of this ITB; or
- d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about, or influence on the Bid of, another Bidder regarding this ITB process;
- e) they are subcontractors to each other's bid, or a subcontractor to one bid also submits another Bid under its name as lead Bidder; or
- f) an expert proposed to be in the bid of one Bidder participates in more than one Bid received for this ITB process. This condition does not apply to subcontractors being included in more than one Bid.

19. Joint Venture, Consortium or Association

If the Bidder is a group of legal entities that will form or have formed a joint venture, consortium or association at the time of the submission of the Bid, they shall confirm in their Bid that : (i) they have designated one party to act as a lead entity, duly vested with authority to legally bind the members of the joint venture jointly and severally, and this shall be duly evidenced by a duly notarized Agreement among the legal entities, which shall be submitted along with the Bid; and (ii) if they are awarded the contract, the contract shall be entered into, by and between UNDP and the designated lead entity, who shall be acting for and on behalf of all entities that comprise the joint venture.

After the bid has been submitted to UNDP, the lead entity identified to represent the joint venture shall not be altered without the prior written consent of UNDP. Furthermore, neither the lead entity nor the member entities of the joint venture can:

- a) Submit another Bid, either in its own capacity; nor
- b) As a lead entity or a member entity for another joint venture submitting another Bid.

The description of the organization of the joint venture/consortium/association must clearly define the expected role of each of the entity in the joint venture in delivering the requirements of the ITB, both in the bid and in the Joint Venture Agreement. All entities that comprise the joint venture shall be subject to the eligibility and qualification assessment by UNDP.

Where a joint venture is presenting its track record and experience in a similar undertaking as those required in the ITB, it should present such information in the following manner:

- a) Those that were undertaken together by the joint venture; and
- b) Those that were undertaken by the individual entities of the joint venture expected to be involved in the performance of the services defined in the ITB.

Previous contracts completed by individual experts working privately but who are permanently or were temporarily associated with any of the member firms cannot be claimed as the experience of the joint venture or those of its members, but should only be claimed by the individual experts themselves in their presentation of their individual credentials.

If the Bid of a joint venture is determined by UNDP as the most responsive Bid that offers the best value for money, UNDP shall award the contract to the joint venture, in the name of its designated lead entity, who shall sign the contract for and on behalf of all the member entities.

20. Alternative Bid

Unless otherwise specified in the **Data Sheet** (DS nos. 5 and 6), alternative bid shall not be considered. Where the conditions for its acceptance are met, or justifications are clearly established, UNDP reserves the right to award a contract based on an alternative bid.

21. Validity Period

21.1 Bid shall remain valid for the period specified in the **Data Sheet** (DS no. 8), commencing on the submission deadline date also indicated in the **Data Sheet** (DS no. 21). A Bid valid for a shorter period shall be immediately rejected by UNDP and rendered non-responsive.

21.2 In exceptional circumstances, prior to the expiration of the Bid validity period, UNDP may request Bidders to extend the period of validity of their Bid. The request and the responses shall be made in writing, and shall be considered integral to the Bid.

22. Bidder's Conference

When appropriate, a Bidder's conference will be conducted at the date, time and location specified in the **Data Sheet** (DS no. 7). All Bidders are encouraged to attend. Non-attendance,

however, shall not result in disqualification of an interested Bidder. Minutes of the Bidder's conference will be either posted on the UNDP website, or disseminated to the individual firms who have registered or expressed interest with the contract, whether or not they attended the conference. No verbal statement made during the conference shall modify the terms and conditions of the ITB unless such statement is specifically written in the Minutes of the Conference, or issued/posted as an amendment in the form of a Supplemental Information to the ITB.

D. SUBMISSION AND OPENING OF BID

23. Submission

23.1 The Technical Bid and the Price Schedule **must be submitted together and sealed together in one and the same envelope**, delivered either personally, by courier, or by electronic method of transmission. If submission will not be done by electronic means, the Technical Bid and Price Schedule must be sealed together in an envelope whose external side must :

- a) Bear the name of the Bidder;
- b) Be addressed to UNDP as specified in the **Data Sheet** (DS no.20); and
- c) Bear a warning not to open before the time and date for Bid opening as specified in the **Data Sheet** (DS no. 24).

If the envelope is not sealed nor labeled as required, the Bidder shall assume the responsibility for the misplacement or premature opening of Bid due to improper sealing and labeling by the Bidder.

23.2 Bidders must submit their Bid in the manner specified in the **Data Sheet** (DS nos. 22 and 23). When the Bid is expected to be in transit for more than 24 hours, the Bidder must ensure that sufficient lead time has been provided in order to comply with UNDP's deadline for submission. UNDP shall indicate for its record that the official date and time of receiving the Bid is the actual date and time when the said Bid has physically arrived at the UNDP premises indicated in the **Data Sheet** (DS no. 20).

23.3 Bidders submitting Bid by mail or by hand shall enclose the original and each copy of the Bid, in separate sealed envelopes, duly marking each of the envelopes as "Original Bid" and the others as "Copy of Bid". The two envelopes, consisting of original and copies, shall then be sealed in an outer envelope. The number of copies required shall be as specified in the **Data Sheet** (DS no. 19). In the event of any discrepancy between the contents of the "Original Bid" and the "Copy of Bid", the contents of the original shall govern. The original version of the Bid shall be signed or initialed by the Bidder or person(s) duly authorized to commit the Bidder on every page. The authorization shall be communicated through a document evidencing such authorization issued by the highest official of the firm, or a Power of Attorney, accompanying the Bid.

23.4 Bidders must be aware that the mere act of submission of a Bid, in and of itself, implies that the Bidder accepts the General Contract Terms and Conditions of UNDP as attached hereto

as Section 11.

24. Deadline for Submission of Bid and Late Bids

Bid must be received by UNDP at the address and no later than the date and time specified in the **Data Sheet** (DS no. 20 and 21).

UNDP shall not consider any Bid that arrives after the deadline for submission of Bid. Any Bid received by UNDP after the deadline for submission of Bid shall be declared late, rejected, and returned unopened to the Bidder.

25. Withdrawal, Substitution, and Modification of Bid

- 25.1 Bidders are expected to have sole responsibility for taking steps to carefully examine in detail the full consistency of its Bid to the requirements of the ITB, keeping in mind that material deficiencies in providing information requested by UNDP, or lack clarity in the description of the *civil works* and related services to be provided, may result in the rejection of the Bid. The Bidder shall assume any responsibility regarding erroneous interpretations or conclusions made by the Bidder in the course of understanding the ITB out of the set of information furnished by UNDP.
- 25.2 A Bidder may withdraw, substitute or modify its Bid after it has been submitted by sending a written notice in accordance with ITB Clause 23, duly signed by an authorized representative, and shall include a copy of the authorization (or a Power of Attorney). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be received by UNDP prior to the deadline for submission and submitted in accordance with ITB Clause 23 (except that withdrawal notices do not require copies). The respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION".
- 25.3 Bid requested to be withdrawn shall be returned unopened to the Bidders.
- 25.4 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bid and the expiration of the period of Bid validity specified by the Bidder on the Bid Submission Form or any extension thereof.

26. Bid Opening

UNDP will open the Bid in the presence of an ad-hoc committee formed by UNDP of at least two (2) members. If electronic submission is permitted, any specific electronic Bid opening procedures shall be as specified in the **Data Sheet** (DS no. 23).

The Bidders' names, modifications, withdrawals, the condition of the envelope labels/seals, the number of folders/files and all such other details as UNDP may consider appropriate, will be announced at the opening. No Bid shall be rejected at the opening stage, except for late submission, for which the Bid shall be returned unopened to the Bidder.

27. Confidentiality

Information relating to the examination, evaluation, and comparison of Bid, and the recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process, even after publication of the contract award.

Any effort by a Bidder to influence UNDP in the examination, evaluation and comparison of the Bid or contract award decisions may, at UNDP's decision, result in the rejection of its Bid.

In the event that a Bidder is unsuccessful, the Bidder may seek a meeting with UNDP for a debriefing. The purpose of the debriefing is discussing the strengths and weaknesses of the Bidder's submission, in order to assist the Bidder in improving the bid presented to UNDP. The content of other bid and how they compare to the Bidder's submission shall not be discussed.

E. EVALUATION OF BID

28. Preliminary Examination of Bid

UNDP shall examine the Bid to determine whether they are complete with respect to minimum documentary requirements, whether the documents have been properly signed, whether or not the Bidder is in the UN Security Council 1267/1989 Committee's list of terrorists and terrorist financiers, and in UNDP's list of suspended and removed vendors, and whether the Bid are generally in order, among other indicators that may be used at this stage. UNDP may reject any Bid at this stage.

29. Evaluation of Bid

29.1 UNDP shall examine the Bid to confirm that all terms and conditions under the UNDP General Terms and Conditions and Special Conditions have been accepted by the Bidder without any deviation or reservation.

29.2 The evaluation team shall review and evaluate the Bids on the basis of their responsiveness to the Schedule of Requirements and Technical Specifications and other documentation provided, applying the procedure indicated in the **Data Sheet** (DS No. 25). Absolutely no changes may be made by UNDP in the criteria after all Bids have been received.

29.1 UNDP reserves the right to undertake a post-qualification exercise, aimed at determining, to its satisfaction the validity of the information provided by the Bidder. Such post-qualification shall be fully documented and, among those that may be listed in the **Data Sheet** (DS No.33), may include, but need not be limited to, all or any combination of the following :

- a) Verification of accuracy, correctness and authenticity of the information provided by the bidder on the legal, technical and financial documents submitted;
- b) Validation of extent of compliance to the ITB requirements and evaluation criteria based on what has so far been found by the evaluation team;
- c) Inquiry and reference checking with Government entities with jurisdiction on the bidder,

- or any other entity that may have done business with the bidder;
- d) Inquiry and reference checking with other previous clients on the quality of performance on on-going or previous contracts completed;
- e) Physical inspection of the bidder's plant, factory, branches or other places where business transpires, with or without notice to the bidder;
- f) Testing and sampling of completed goods similar to the requirements of UNDP, where available; and
- g) Other means that UNDP may deem appropriate, at any stage within the selection process, prior to awarding the contract.

30. Clarification of Bid

To assist in the examination, evaluation and comparison of bids, UNDP may, at its discretion, ask any Bidder to clarify its Bid.

UNDP's request for clarification and the Bidder's response shall be in writing. Notwithstanding the written communication, no change in the prices or substance of the Bid shall be sought, offered, or permitted, except to provide clarification, and confirm the correction of any arithmetic errors discovered by UNDP in the evaluation of the Bid, in accordance with ITB Clause 35.

Any unsolicited clarification submitted by a Bidder in respect to its Bid, which is not a response to a request by UNDP, shall not be considered during the review and evaluation of the Bid.

31. Responsiveness of Bid

UNDP's determination of a Bid's responsiveness will be based on the contents of the Bid itself.

A substantially responsive Bid is one that conforms to all the terms, conditions, and specifications of the ITB without material deviation, reservation, or omission.

If a Bid is not substantially responsive, it shall be rejected by UNDP and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.

32. Nonconformities, Reparable Errors and Omissions

32.3 Provided that a Bid is substantially responsive, UNDP may waive any non-conformities or omissions in the Bid that, in the opinion of UNDP, do not constitute a material deviation.

32.4 Provided that a Bid is substantially responsive, UNDP may request the Bidder to submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Bid related to documentation requirements. Such omission 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.

32.5 Provided that the Bid is substantially responsive, UNDP shall correct arithmetical errors as follows:

- 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 UNDP 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 the above.*

32.6 If the Bidder does not accept the correction of errors made by UNDP, its Bid shall be rejected.

F. AWARD OF CONTRACT

33. Right to Accept, Reject, or Render Non-Responsive Any or All Bid

- 33.1 UNDP reserves the right to accept or reject any Bid, to render any or all of the Bids as non-responsive, and to reject all Bids at any time prior to award of contract, without incurring any liability, or obligation to inform the affected Bidder(s) of the grounds for UNDP's action. Furthermore, UNDP is not obligated to award the contract to the lowest price offer.
- 33.2 UNDP shall also verify, and immediately reject their respective Bid, if the Bidders are found to appear in the UN's Consolidated List of Individuals and Entities with Association to Terrorist Organizations, in the List of Vendors Suspended or Removed from the UN Secretariat Procurement Division Vendor Roster, the UN Ineligibility List, and other such lists that as may be established or recognized by UNDP policy on Vendor Sanctions. (See http://www.undp.org/content/undp/en/home/operations/procurement/procurement_protest/)

34. Award Criteria

Prior to expiration of the period of Bid validity, UNDP shall award the contract to the qualified and eligible Bidder that is found to be responsive to the requirements of the Statement of Work/Schedule of Requirements and Technical Specification, and has offered the lowest price (See DS No. 32).

35. Right to Vary Requirements at the Time of Award

At the time of award of Contract, UNDP reserves the right to vary the quantity of the BoQ/goods and/or related services, by up to a maximum twenty five per cent (25%) of the total offer, without any change in the unit price or other terms and conditions.

36. Contract Signature

Within fifteen (15) days from the date of receipt of the Contract, the successful Bidder shall sign and date the Contract and return it to UNDP.

Failure of the successful Bidder to comply with the requirement of ITB Section F.3 and this provision shall constitute sufficient grounds for the annulment of the award, and forfeiture of the Bid Security if any, and on which event, UNDP may award the Contract to the Bidder with the second highest rated Bid, or call for new Bid.

37. Performance Security

A performance security, if required, shall be provided in the amount and form provided in Section 9 and by the deadline indicated in the **Data Sheet** (DS no. 14), as applicable. Where a Performance Security will be required, the submission of the said document, and the confirmation of its acceptance by UNDP, shall be a condition for the effectivity of the Contract that will be signed by and between the successful Bidder and UNDP.

38. Bank Guarantee for Advanced Payment

Except when the interests of UNDP so require, it is the UNDP's preference to make no advanced payment(s) on contracts (i.e., payments without having received any outputs). In the event that the Bidder requires an advanced payment upon contract signature, and if such request is duly accepted by UNDP, and the said advanced payment exceeds 20% of the total Bid price, or exceed the amount of USD 30,000, UNDP shall require the Bidder to submit a Bank Guarantee in the same amount as the advanced payment. A bank guarantee for advanced payment shall be furnished in the form provided in Section 10.

39. Vendor Protest

UNDP's vendor protest procedure provides an opportunity for appeal to those persons or firms not awarded a purchase order or contract through a competitive procurement process. In the event that a Bidder believes that it was not treated fairly, the following link provides further details regarding UNDP vendor protest procedures:
<http://www.undp.org/procurement/protest.shtml>

Instructions to Bidders

DATA SHEET

The following data for the supply of civil works and related services shall complement / supplement the provisions in the Instruction to Bidders. In the case of a conflict between the Instruction to Bidders and the Data Sheet, the provisions in the Data Sheet shall prevail.

DS No.	Cross Ref. to Instructions	Data	Specific Instructions / Requirements
1		Project Title:	Addressing Climate Change Risks on Water Resources and Food Security in the Dry Zone of Myanmar
2		Title of Works and Services Required:	<p>Provision of Construction and Installation of small-scale water infrastructure in the Dry Zone of Myanmar . The Works is divided into Three Packages as follows:</p> <p><u>PACKAGE A:</u></p> <p><u>SAGAIN REGION:</u> which shall include Shwebo Township and Monywa Township and the following works:</p> <p>LOT One: Shwebo Township: 11 Communal Water Tanks (CWT) 10 Shallow Tube Wells Rehabilitation of 1 Deep Tube Well 70 Water Pumping Systems for irrigation</p> <p>LOT Two: Monywa Township 16 Communal Water Tanks 10 Shallow Tube Wells Rehabilitation of 2 Deep Tube Wells</p> <p><u>PACKAGE B:</u></p> <p><u>MANDALAY REGION:</u> which shall include Myingyan Township and Nyaung U Township and the following works:</p> <p>LOT Three: Myingyan Township: 6 Communal Water Tanks LOT Four: Nyaung U Township 12 Communal Water Tanks 4 Deep Tube Wells</p>

			<p><u>PACKAGE C:</u></p> <p><u>MAGWAY REGION:</u> which shall include Chauk Township and the following works:</p> <p>LOT Five: Chauk Township 11 Communal Water Tanks 5 Deep Tube Wells</p>
3		Country:	Myanmar in the following areas/townships: Shwebo, Monywa, Myingyan, Nyaung U and Chauk
4		Company and Personnel Qualifications for Each Region:	
4A		<p>Company and Personnel Qualifications for</p> <p>PACKAGE A:</p> <p>Sagaing Region - (Lot 1 - Shwebo and Lot 2 - Monywa)</p>	<p>(a) Valid registration certificate to trade in Myanmar as a construction firm.</p> <p>(b) Minimum 2 years of experience in boreholes drilling, construction of concrete reservoirs, assembling of water harvesting systems, and water supply piping networks, preferably in Myanmar Dry Zone or similar locations.</p> <p>(c) Ability to mobilize the following materials:</p> <p>1 dump trucks 1 pick-up 4x4 1 drilling machines with all equipment (rotary rigs, water truck, sludge system, and percussive rigs) in good working condition.</p> <p>(d) Team Composition and Structure, during the whole period of implementation in Sagaing Region:</p> <p>One Project Manager : Degree in Civil Engineer with 5 years of experience. Fluent in English.</p> <p>One Hydrologist: Degree in Hydrology with 5 years of experience with qualifications in groundwater management from which at least 3 years of experience in borehole drilling supervision including interpretation of pumping tests.</p> <p>Two Township Coordinators: no specific degree is required but at least 3 years experience in coordination activities for similar projects. Fluency is expected in the Myanmar Language.</p> <p>Two Drilling Foremen: with 5 years of general experience, including experience in similar zone will be an advantage.</p> <p>One Civil Works Technician: with 5 years of general experience, including experience in similar zone will be an advantage.</p> <p>One Electro-mechanics Engineer: with 5 years of general experience, including experience in similar zone will be an</p>

			<p>advantage.</p> <p>One Socio-Economist: Batchelor Degree (Degree of Social Science (is preferable but not mandatory) with 5 years of general experience, including 3 years of experience in similar assignments related to training communities to build up capacity in similar projects, community mobilization and social intermediation. Fluency is expected in the Myanmar Language.</p> <p>(e) A minimum number of 2 Contracts, implemented over the past 2 years, of a similar nature and complexity.</p> <p>(f) Sound and stable financial Statements for the last two years (in English).</p> <p>(g) No or solved litigation and arbitration history, current or at least the last 2 years, in which the Bidder was/is involved.</p> <p>(h) No Conflict of Interest in term of company and personnel.</p>
4B		<p>Company and Personnel Qualifications for</p> <p>PACKAGE B:</p> <p>Mandalay Region – Lot 3 Nyaung-u and Lot 4 Myingyan</p>	<p>a) Valid registration certificate to trade in Myanmar as a construction firm.</p> <p>b) Minimum 2 years of experience in boreholes drilling, construction of concrete reservoirs, assembling of water harvesting systems, and water supply piping networks preferably in Myanmar Dry Zone or similar locations.</p> <p>c) Ability to mobilize the following materials: 1 dump trucks 1 pick-up 4x4 1 drilling machines with all equipment (rotary rigs, water truck, sludge system, and percussive rigs) in good working condition.</p> <p>d) Team Composition and Structure, during the whole period of implementation in Mandalay Region:</p> <p>One Project Manager : Degree in Civil Engineer with 5 years of experience. Fluent in English.</p> <p>One Hydrologist: Degree in Hydrology with 5 years of experience with qualifications in groundwater management from which at least 3 years of experience in borehole drilling supervision, including interpretation of pumping tests.</p> <p>Two Township Coordinators : no specific degree is required but at least 3 years experience in coordination activities for similar projects. Expected to be fluent in the Myanmar Language.</p> <p>One Drilling Foreman: with 5 years of general experience, including experience in similar zone will be an advantage.</p> <p>One Civil Works Technician: with 5 years of general experience, including experience in similar zone will be an advantage.</p> <p>One Electro-mechanics Engineer: with 5 years of general experience, including experience in similar zone will be an advantage.</p>

			<p>One Socio-Economist: Batchelor Degree (Degree of Social Science (is preferable but not mandatory) 5 years of general experience, including at least 3 years of experience in similar assignments related to training communities to build up capacity in similar projects, community mobilization and social intermediation. Fluency is expected in the Myanmarise Language.</p> <p>e) A minimum number of 2 Contracts, implemented over the past 2 years, of a similar nature and complexity</p> <p>f) Sound and stable financial Statements for the last two years in English.</p> <p>g) No or solved litigation and arbitration history, current or at least the last 2 years, in which the Bidder was/is involved.</p> <p>h) No Conflict of Interest in term of company and personnel.</p>
4C		<p>Company and Personnel Qualifications for</p> <p>PACKAGE C:</p> <p>Magway Region – LoT 5: Chauk</p>	<p>(a) Valid registration certificate to trade in Myanmar as a construction firm.</p> <p>(b) Minimum 2 years of experience in boreholes drilling, construction of concrete reservoirs, assembling of water harvesting systems, and water supply piping networks preferably in Myanmar Dry Zone or similar locations.</p> <p>(c) Ability to mobilize the following materials: 1 dump trucks 1 pick-up 4x4 1 drilling machines with all equipment (rotary rigs, water truck, sludge system, and percussive rigs) in good condition.</p> <p>(d) Team Composition and Structure, during the whole period of implementation in Magway Region:</p> <p>One Project Manager: Degree in Civil Engineer with 5 years of experience. Fluent in English.</p> <p>One Hydrologist: Degree in Hydrology with 5 years of experience with qualifications in groundwater management from which at least 3 years of experience in borehole drilling supervision, including interpretation of pumping tests.</p> <p>One Township Coordinator: no specific degree is required but at least 3 years experience in coordination activities for similar projects. Fluency is expected in the Myanmar Language.</p> <p>One Drilling Foreman: with 5 years of general experience, including experience in similar zone will be an advantage.</p> <p>One Civil Works Technician: with 5 years of general experience including experience in similar zone will be an advantage.</p> <p>One Electro-mechanics Engineer: with 5 years of general experience including experience in similar zone will be an advantage.</p> <p>One Socio Economist: Batchelor Degree (Degree of Social Science (is preferable but not mandatory) 5 years of general experience, including at least 3 years of experience in similar</p>

			<p>assignments related to training communities to build up capacity in similar projects, community mobilization and social intermediation. Fluency is expected in the Myanmar Language.</p> <p>(e) A minimum number of 2 Contracts, implemented over the past 2 years, of a similar nature and complexity</p> <p>(f) Sound and stable financial Statements for the last two years in English.</p> <p>(g) No or solved litigation and arbitration history, current or at least the last 2 years, in which the Bidder was/is involved.</p> <p>(h) No Conflict of Interest in term of company and personnel.</p>
5	C.13	Language of the Bid:	<input checked="" type="checkbox"/> English
6	C.20	Conditions for Submitting Bid for Parts or sub-parts of the Total Requirements	<input checked="" type="checkbox"/> Technical Submissions is allowed for any Package. Bidders who wish to quote for all PACKAGES are welcomed to do so, however evaluation for each PACKAGE shall be done separately. Therefore, bidders who wish to be considered for more than one PACKAGE, need to submit a separate Offer for each PACKAGE and indicate clearly which PACKAGE they are submitting an offer for.
7	C.21	Conditions for Submitting Alternative Bid	<input checked="" type="checkbox"/> Shall not be considered
8	C.22	A pre-Bid conference will be held on: <i>(Bidders are highly recommended to attend the pre- bid meeting; Non-attendance, however, SHALL NOT result in disqualification).</i>	<p>Time: 13:00 Hrs Date: 12th July 2017 Venue: UNDP Office, No. 6, Natmauk Road, Tamwe Township, Yangon 11211, Myanmar</p> <p>The UNDP focal point for the arrangement is: Kyaw Win Htun Address: UNDP Office, No. 6, Natmauk Road, Tamwe Township, Yangon 11211, Myanmar Fax No. :+ 95 1 545634 & 544531 Telephone: +959 542910-11; Ext: 165 E-mail: kyaw.win.htun@undp.org</p> <p>For Bidders who are unable to physically attend the pre-bid meeting, shall be connected either through telephone or skype.</p> <p>Bidders interested to participate in the pre bid meeting must send the following details to kyaw.win.htun@undp.org:</p> <p>Name of company:</p>

			<p>City: Name of contact person: Phone number with code or skype ID: e-mail address:</p> <p>Minutes of the bidder's conference will be posted on the UNDP website and disseminated to the firms who have expressed interest in submitting an offer, irrespective of their participation in the pre-bid conference.</p>																										
9		<p>A site visit for each location will be held on:</p> <p><i>It is highly recommended to do the site visit before submission of bids, but it is not mandatory.</i></p>	<p>(Exact date for site visit will be confirmed during the Pre-bid meeting)</p> <table border="1"> <thead> <tr> <th>Package Reference Number</th> <th>Region</th> <th>Township</th> <th>Tentative Date of Site Visit</th> <th>Time</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Package A</td> <td rowspan="2"><i>Sagaing</i></td> <td>Shwebo</td> <td>13 July 2017</td> <td>08:00 a.m</td> </tr> <tr> <td>Monywa</td> <td>14 July 2017</td> <td>08:00 a.m</td> </tr> <tr> <td rowspan="2">Package B</td> <td rowspan="2"><i>Mandalay</i></td> <td>Nyaung-u</td> <td>17 July 2017</td> <td>08:00 a.m</td> </tr> <tr> <td>Myingyan</td> <td>20 July 2017</td> <td>08:00 a.m</td> </tr> <tr> <td>Package C</td> <td><i>Magway</i></td> <td>Chauk</td> <td>18 July 2017</td> <td>08:00 a.m</td> </tr> </tbody> </table>	Package Reference Number	Region	Township	Tentative Date of Site Visit	Time	Package A	<i>Sagaing</i>	Shwebo	13 July 2017	08:00 a.m	Monywa	14 July 2017	08:00 a.m	Package B	<i>Mandalay</i>	Nyaung-u	17 July 2017	08:00 a.m	Myingyan	20 July 2017	08:00 a.m	Package C	<i>Magway</i>	Chauk	18 July 2017	08:00 a.m
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10	C.21.1	Period of Bid Validity commencing on the submission date	<input checked="" type="checkbox"/> 120 days																										
11	B.9.5 C.15.4 b)	Bid Security	<input checked="" type="checkbox"/> Not required.																										
12	B.9.5	Acceptable forms of Bid Security	<input checked="" type="checkbox"/> Not applicable in this ITB																										
13	B.9.5 C.15.4 a)	Validity of Bid Security	Not Applicable																										
14		Advanced Payment upon signing of contract	<input checked="" type="checkbox"/> Not allowed																										

15		Liquidated Damages	<input checked="" type="checkbox"/> Might be imposed under the following conditions: 1- Percentage of contract price per day of delay: 0.5 percent 2- Max. no. of applicable penalty: 10 percent 3- Next course of action: Termination of Contract.
16	F.37	Performance Security	<input checked="" type="checkbox"/> Required in the amount of 10% of the contract amount in the form provided under Section 9. (a) Within 7 days of receipt of the letter of Intent, and before contract signature, the successful Bidder shall furnish a Performance Security to UNDP in the amount of 10% of the contract Value; (b) The proceeds of the Performance Security shall be payable to the UNDP as a compensation for any loss resulting from the Contractors' failure to complete its obligations under the contract; (c) The Performance Security shall be denominated in the currency of the contract; (d) The Performance Security shall be valid until end of defects liability period (i.e. 12 months after the intended completion date) plus 30 days. Note: Money retention might be considered in lieu of a Performance Security.
17	C.17 C.17.2	Preferred Currency of Bid and Method for Currency conversion	<input checked="" type="checkbox"/> United States Dollars (US\$) OR <input checked="" type="checkbox"/> Local Currency for local companies: For bids provided in the local currency UNDP will convert the currency quoted in the Bid into USD currency, in accordance with the prevailing UN operational rate of exchange on the last closing date of submission of Bid for proper evaluation purposes.
18	B.10.1	Deadline for submitting requests for clarifications/ questions	10 days before the submission deadline
19	B.10.1	Contact Details for submitting	Focal Person in UNDP: Kyaw Win Htun Address: UNDP Office, No. 6, Natmauk Road, Tamwe Township, Yangon 11211, Myanmar Facsimile:

		clarifications/questions ¹	Fax No. :+ 95 1 545634 & 544531 E-mail: kyaw.win.htun@undp.org
20	B.11.1	Manner of Disseminating Supplemental Information to the ITB and responses/clarifications to queries	<input checked="" type="checkbox"/> Direct communication to prospective Proposers by email or fax, and Posting on the websites http://procurement-notice.undp.org/ https://www.ungm.org/
21	D.23.3	No. of copies of Bid that must be submitted	Original: One Original Copies: Four Copies <i>In addition to One (1) soft copies on CD/DVD.</i> Submissions must be identical and include all required documents. In the event of any discrepancies, the “ Original Bid ” submitted in hard copy shall govern.
22	D.23.1 b) D.23.2 D.24	Bid submission address	<i>Please see below DS No. 25 :</i> <i>A) Conditions and Procedures for Electronic Submission DS.No. 25 A.</i> <i>B) Conditions and Procedures for Courier/Hand Delivery Submission. DS No. 25 B.</i>
23	C.21.1 D.24	Deadline of Bid Submission	Date and Time : <i>CoB 28 July 2017 (Myanmar Standard Time)</i>
24	D.23.2	Manner of Submitting Bid	<input checked="" type="checkbox"/> Courier/Hand Delivery OR <input checked="" type="checkbox"/> Electronic submission of Bid
25 A	D.23.2 D.26	Conditions and Procedures for electronic submission and opening, if allowed	<input checked="" type="checkbox"/> Official Address for e-submission: bids.mm@undp.org <input checked="" type="checkbox"/> Format: PDF files only, PASSWORD PROTECTED. <input checked="" type="checkbox"/> Password <u>MUST NOT</u> be provided to UNDP until the date and time of Bid Opening as indicated in this ITB. <input checked="" type="checkbox"/> Max. File Size per transmission: 9 MB <input checked="" type="checkbox"/> Max. No. of transmission : Unlimited <input checked="" type="checkbox"/> Mandatory subject of email : <i>Provision of Construction and Installation of small-scale water infrastructure in the Dry Zone of Myanmar 2017/PROC/UNDP-MMR/062</i> <input checked="" type="checkbox"/> Sent Bids must be free from virus and corrupted files. Bidders should check the attachment formats prior to submission as the Purchaser will not be responsible if attachments are in other formats that cannot be opened. If

¹ This contact person and address is officially designated by UNDP. If inquiries are sent to other person/s or address/es, even if they are UNDP staff, UNDP shall have no obligation to respond nor can UNDP confirm that the query was officially received.

			<p>zip files are used, they should not include multiple lower sub-folders or directories.</p> <p>Bidders should avoid attempting to send Bids by e-mail just prior to the deadline as the Purchaser cannot be held responsible for congestion or delays in transmission. The time of receipt of the last e-mail message of a bid as recorded by the Purchaser's mail server shall constitute the time of receipt of the bid for purpose of meeting the bid deadline. It is the bidders' responsibility to ensure bids arrive before the deadline.</p>
25 B	D.23	Instructions on submission of ITB through Courier/ Hand Delivery:	<p>OFFERS MUST be submitted to the following Address: Att.: Nasantuya Chuluun; Operations Manager Address: UNDP Office, No. 6, Natmauk Road, Tamwe Township, Yangon 11211, Myanmar</p> <p>Offers shall be submitted in individual sealed envelopes clearly marked on the outside as either "TECHNICAL Offer" or "FINANCIAL Offer", as appropriate.</p> <p>Offerors shall enclose one original and four copies of the Offer, in two sealed envelopes, duly marking each of the envelopes as "Original Proposal" and "Copy of Proposal" as appropriate.</p> <p>The bigger outer envelope shall be clearly marked as follows: NOT TO BE OPENED BY REGISTRY Full Name of Proposer Ref. 2017/PROC/UNDP-MMR/062 Att: Nasantuya Chuluun; Operations Manager</p>
26	D.23.1 c)	Date, time and venue for opening of Bid	<p>Date and Time: July 31, 2017 10:00 AM Venue : UNDP Office, No. 6, Natmauk Road, Tamwe Township, Yangon 11211, Myanmar</p>
27		Evaluation method to be used in selecting the most responsive Bid	<p><input checked="" type="checkbox"/> Non-Discretionary "Pass/Fail" Criteria on the Technical Requirements; and <input checked="" type="checkbox"/> Lowest price offer of technically qualified/responsive Bid</p>
28	C.15.1	Required Documents that must be Submitted to Establish Qualification of Bidders (In "Certified True Copy" form only)	<p><input checked="" type="checkbox"/> Bid Submission Form (Section 4) <input checked="" type="checkbox"/> Section (5) Documents Establishing the Eligibility and Qualifications of the Bidder <input checked="" type="checkbox"/> Section (6) Technical Bid Form <input checked="" type="checkbox"/> Priced Bill of Quantities (Section 7) including prices in the relevant BoQ.</p>

			<p><input checked="" type="checkbox"/> Certificate of Registration of the business, including Articles of Incorporation, or equivalent document if Bidder is not a corporation;</p> <p><input checked="" type="checkbox"/> Written power of attorney, authorizing the signatory of the bid to commit the Bidder;</p> <p><input checked="" type="checkbox"/> In case of consortium/joint venture/sub - contracting with companies letter of intent/agreement is required;</p> <p><input checked="" type="checkbox"/> Company Profile, which should not exceed (15) pages;</p> <p><input checked="" type="checkbox"/> List and value of projects performed for the last two (2) years, plus client's contact details who may be contacted for further information on those contracts;</p> <p><input checked="" type="checkbox"/> List and value of on - going projects with contact details of clients and current percentage of completion for each ongoing project if applicable.</p> <p><input checked="" type="checkbox"/> Statement of Satisfactory Performance from the Top (3) Clients in terms of Contract Value in the past (2) years;</p> <p><input checked="" type="checkbox"/> Tax Clearance Certificate issued by the Internal Revenue Authority evidencing that the Bidder is updated with its tax payment obligations, or Certificate of Tax exemption, if any such privilege is enjoyed by the Bidder</p> <p><input checked="" type="checkbox"/> Local Government permit to locate and operate in the current location, as applicable</p> <p><input checked="" type="checkbox"/> Official Letter of Appointment as local representative, if Bidder is submitting a Bid on behalf of an entity located outside the country</p> <p><input checked="" type="checkbox"/> All information regarding any past and current litigation at least the last two (2) years, in which the bidder is involved, indicating the parties concerned, the subject of the litigation, the amounts involved, and the final resolution if already concluded.</p>
29		Other documents that may be Submitted to Establish Eligibility	<input checked="" type="checkbox"/> Any requirements referred to in the Terms of Reference.
30	C.15	Structure of the Technical Bid and List of Documents to be Submitted	<p><i>Technical Proposal to be submitted as follows:</i></p> <p><input checked="" type="checkbox"/> <i>Documents mentioned under DS.28</i></p> <p><input checked="" type="checkbox"/> <i>Section 6 : Technical Submission Form.</i></p>
31	C.15.2	Latest Expected date for commencement of Contract	<i>August 18, 2017</i>

32	C.15.2	Maximum Expected duration of contract Per Region	7 months per package
33		UNDP will award the contract to:	<input checked="" type="checkbox"/> One or more Bidders as follows: Separate awards shall be allowed under each Package and shall take the following precedence: <ol style="list-style-type: none"> 1- Contract shall be awarded under each package to the lowest priced technically accepted offer. 2- In case a bidder is the lowest in price for more than one package but doesn't meet the criteria of the "required average annual turnover" under each package separately and meets it only under one package, the award shall be made to the least priced package combination from UNDP.
34	F.34	Criteria for the Award and Evaluation of Bid	<p><u>Offers shall be evaluated separately under each Region and as follows:</u></p> <p><u>Award Criteria</u></p> <p><input checked="" type="checkbox"/> Non-discretionary "Pass" or "Fail" rating on the detailed contents of the Schedule of Requirements and Technical Specifications</p> <p><input checked="" type="checkbox"/> Compliance on the following qualification requirements :</p> <p><u>Bid Evaluation Criteria for all Packages:</u></p> <p><input checked="" type="checkbox"/> Minimum no. of years of experience in similar contracts: years (2);</p> <p><input checked="" type="checkbox"/> Average annual turnover should be of \$US60,000 for the past two (2) years for each package separately.</p> <p><input checked="" type="checkbox"/> Minimum no. of similar projects undertaken during the past 2 years – two 2 projects;</p> <p><input checked="" type="checkbox"/> Full compliance of Bid to the Technical Requirements;</p> <p><input checked="" type="checkbox"/> Appropriateness of the Implementation Timetable to Project Schedule;</p> <p><input checked="" type="checkbox"/> Minimum Human Resources, Machinery and Equipment, as indicated in ITB document.</p> <p><input checked="" type="checkbox"/> Bidder's Personnel Evaluation, (Staff Required).</p>
35	E.29	Post qualification Actions	<p><input checked="" type="checkbox"/> Verification of accuracy, correctness and authenticity of the information provided by the bidder on the legal, technical and financial documents submitted;</p> <p><input checked="" type="checkbox"/> Validation of extent of compliance to the ITB requirements and evaluation criteria based on what has so far been found</p>

			<p>by the evaluation team;</p> <p><input checked="" type="checkbox"/> Inquiry and reference checking with Government entities with jurisdiction on the bidder, or any other entity that may have done business with the bidder;</p> <p><input checked="" type="checkbox"/> Inquiry and reference checking with other previous clients on the quality of performance on ongoing or previous contracts completed;</p> <p><input checked="" type="checkbox"/> Physical inspection of the bidder's plant, factory, branches or other places where business transpires, with or without notice to the bidder;</p>
36		Conditions for Determining Contract Effectivity	<p><input checked="" type="checkbox"/> UNDP's receipt of Performance Bond</p> <p><input checked="" type="checkbox"/> UNDP's approval of plans, drawings, samples, etc.</p>
37		Other Information Related to the ITB	

Section 3: Requirements, Scope of Work and Technical Specifications

Construction/Installation of small-scale water infrastructure in the Dry Zone of Myanmar:

A. Project Description:

UNDP Myanmar, with funding from the Adaptation Fund, will be implementing the Climate Change Adaptation project “Addressing Climate Change Risks on Water Resources and Food Security in the Dry Zone of Myanmar.” The project aims to reduce the increasing impacts of climate change on agricultural and livestock production cycles in the dry zone of Myanmar - the impacts of increasing temperature and evaporation, declining water availability, and intensifying weather events, especially flash floods and cyclones.

The Dry Zone is one of the most climate sensitive and natural resource poor regions in Myanmar, and is vulnerable to growing food insecurity and severe environmental degradation. Objective of the project is to reduce the vulnerability of farmers in Myanmar’s Dry Zone to increasing drought and rainfall variability, and enhance the capacity of farmers to plan for and respond to future impacts of Climate Change on food security.

The project will operate in five townships in the **Sagaing, Mandalay and Magway Regions**:

- Shwebo and Monywa townships in the **Sagaing Region - (Package A)**
- Myingyan and Nyaung U townships in the **Mandalay Region - (Package B)** and
- Chauk townships in the **Magway Region - (Package C)**.

The townships were selected on the basis of observed temperature extremes, frequency of drought per year, and the impacts of climatic parameters on food security. An additional criterion for township selection was the potential to access ground and surface water resources – vital prerequisites for small irrigation and water management schemes. The direct beneficiaries of the project are marginal farmers in rain-fed areas and landless workers whose access to arable land is severely threatened by erosion and land degradation. Special emphasis is placed on women and female-headed households within this vulnerable group.

The project targets approximately 50,000 households from 280 villages. The target population is largely categorized into the following three types of beneficiaries:

- First group is landless farmers, who make up about 60% of target population;
- Second group is marginal/small farmers whose landholding is less between 0.4 – 0.8 hectares and they make up about 25% of target population; and
- The third group is farmers who have landholding larger than 0.8 hectares.

Absence of community water infrastructure for both domestic and agricultural purposes is a critical constraint in building the resilience of these communities to future climate change impact. This project aims to deliver the following key outputs to build community resilience to climate change:

1. Enhancing water capture and storage capacities in 280 villages to augment irrigation and domestic water supply during the dry periods
2. Protecting and rehabilitating 4,200 hectares of micro-watersheds through Farmer- Managed Natural Regeneration (FMNR) to increase natural water retention and reduce erosion
3. Establishing 5,100 hectares of community-based agro-forestry plots in private and communal lands to conserve soil and water
4. Introducing drought-resilient farming methods
5. Introducing resilient post-harvest processing and storage systems
6. Introducing diversified livestock production systems targeting landless households

Farmers with access to land are expected to directly benefit from Output 1 through an improved access to irrigation and/or domestic water supplies. Landless households are expected to derive direct benefits through diversified livestock assets and improved ecosystem services (such as greater availability of non-forest products and more reliable freshwater supply).

At present, Dry Zone farmers have limited access to physical water infrastructure that is required to maintain resilient rural livelihoods in a changing climate. Improving the management of potable water, assistance for tube wells (where technically feasible) and introducing more efficient/alternative irrigation techniques and practices are recognized as key measures to increase the adaptive capacity and resilience of rural farming communities.

To address the above issues and to deliver the required support to targeted communities, UNDP has conducted an assessment and identification of water infrastructure needs for drinking and irrigation water in the Dry Zone of Myanmar.

As follow up action after the assessment and to address the above issues and to deliver the required support to targeted communities, UNDP is looking for a company/enterprise to implement the construction works and follow up trainings on operation and maintenance of water users and relevant leaders in line with the conducted assessment.

B. Objectives:

The main objective of the assignment is to provide the following works and services in the 5 townships:

1. Drilling of 9 deep tube-wells (DTW) and equipment with submersible/immersed pumps;
2. Renovation of 3 deep tube-wells;
3. Drilling of 20 shallow tube-wells (STW) and equipment with hand pumps;
4. Supply and installation of 56 communal water tanks / rain water tanks;
5. Supply and installation of 70 water pumping systems for irrigation and
6. Operation and maintenance trainings for water users and relevant leaders.

C. Supervision and Monitoring:

UNDP AF project Technical Specialist, Project Manager, and Soil Conservation and Water Harvesting Specialist together with the direct supervision from a third party company will be supervising and monitoring the implementation of works and ensure that all requirements are being adhered to as specified in standards of works SoWs and Technical Specifications and to ensure quality of works received.

The third party company shall be specifically required to apply the following non-exhaustive however main tasks:

- To closely and continuously monitor the progress of work of the contractor throughout the implementation period as well as conducting quality check and assurance of procured items and implemented works.
- To report to UNDP on implementation progress and challenges of the implementing contractor.
- To provide monthly progress reports with finding & progress on the status of construction, installation, capacity building tasks performed by the contractor including provision of photo documentations.
- To ensure water quality test for already completed tube wells and check discharge rate (gallon per hour GPH) and provide the recommendation for usage of community.
- To perform the hand over process of the water infrastructure to communities.

D. Scope of Work:

- 1- To Submit a detailed work-plan (with clear indicators & targets) including monitoring framework. Upon signature of contract, UNDP shall further review, the provided work plan and monitoring framework and agree with the Contractor on any additional comments and approval of the final work plan. (Both work-plan and monitoring framework should be consistent with each other). Both documents are expected to be aligned with the supervision firm's updated work-plan + monitoring framework. Therefore, before submitting the final work-plan and monitoring framework to UNDP, the Contractor is expected to consult and negotiate with the supervision firm after award of contract. The final draft work plan and monitoring framework should be submitted to UNDP during day 2 of the orientation at which the contractor firm should attend by 3 staff including senior staff. The final work plan and monitoring framework should be submitted to UNDP/AF project office through supervision firm not later than 1 week after the orientation for UNDP's approval. Also, a final Gantt chart mentioning timeline for activity implementation should accompany the work-plan.
- 2- Conduct field visits to villages (together with technical personnel of the supervision firm and identify site of location of infrastructure together with the community for each of the activities: deep tube-well (new), deep tube-well (renovation), shallow tube-well, communal water tank and installation of water pumping systems. Note that sites have already been selected during the first phase of the project in consultance with users representatives).
- 3- Ensure that meetings are organized with village community representatives to receive feedback and agreement on the final proposed sites for each of water infrastructures to implement.
- 4- UNDP together with the supervision firm shall ensure land acquisition formalities and secure land as communal ownership for final installation of infrastructures. The activity requires recorded evidence signed by relevant village tract administrators, village authorities or head of village and land owners (as applicable). (*Area required for each infrastructure is referred to in **Annex 3** (The Technical Drawing Sheets) in terms of type of the structure*).
- 5- Conduct pre-execution reports per site to prepare the complete list of equipment/materials needed. Establish and mobilize the village water user groups at target villages. (The standard operating procedures will be prepared and shared by the supervision firm).

The contractor is responsible to get in touch, inform and mobilize village water users' groups' representatives in each village in order to reconfirm their participation to the project in terms of location of the small infrastructure, as well as agreement on construction-site. This activity will be communicated to Supervision Firm in order to organize the site handover meeting. The aim of these pre-handover activities is to reconfirm or re-identify the exact location of the infrastructure with users based on the Rapid Need Assessment conducted by the Supervision Firm.

- 6- Procurement of required goods/tools/equipment and transport to the respective work sites should be completed on time and to be the same as per approved work plan. The supervision firm will provide monitoring services to ensure quantity and quality are as per specifications.
- 7- Construction/installation of activities: Deep tube well (new construction and renovation), shallow tube well (new construction), community water tanks (new construction) and water pumping systems in the three Regions and Villages as described under **Annex 1 – (Number of Required Units Under Each Region/Township)** and as per area specifications provided as **Annex 2 (The General Technical Specifications)**, **Annex 3 (The Technical Drawing Sheets)**, **Annex 4 (The Technical Specifications for Small Infrastructure)** and **Annex 5 (The Technical Specifications for Tube-Well)**.
- 8- Following installation of infrastructure, conduct relevant tests with the supervision firm and record and submit the test results to UNDP and relevant government departments. The installation of the deep tube wells (new construction) and shallow tube wells should also include accessories such as pumps, spares and power supply. The activity on water pumping systems will be a separate set of activity as they are meant to support irrigation, whereas tube-wells are meant for drinking water. The infrastructure should meet the specifications as provided by the supervision firm (as per specifications provided in **Annex 2 (The General Technical Specifications)**, **Annex 3 (The Technical Drawing Sheets)**, **Annex 4 (The Technical Specifications for Small Infrastructure)** and **Annex 5 (The Technical Specifications for Tube-Well)**).
- 9- Any deviations from the specifications should be indicated in the Schedule of Non-Compliance attached to this ITB. Any deviation from the standard specifications during the implementation process, without getting prior approval from UNDP will have to be rectified by the Contractor at its own cost.
- 10- Inform the Supervision firm once water samples from tube well activities are available for water quality tests and for measurement of discharge rate. Water quality tests and discharge measurement should be implemented on presence of the supervision firm. By means and expense of the Contractor, water samples will be sent to certified independent lab for testing quality test regarding heavy metals (Mercury, Lead and Arsenic). The results will be sent directly to UNDP with a set of recommendations finalized by the supervision firm for community water use based on the results. UNDP will in turn handover the same set of results and recommendations to DRD so that they can inform the beneficiary communities.
- 11- Provide assistance to the supervision firm in the formulation of standard operating procedures (SOPs) for WUGs which will consist (but not limited to) a set of community managed rules and regulations, including conflict resolution mechanisms.
- 12- Report to the supervision firm and UNDP on a monthly basis on the progress of work in the field. Templates for reporting will be shared during the orientation session. Training reports should be

submitted separately not later than 7 days after the training session is completed. The Contractor is expected to submit a final completion report to the supervision firm and UNDP at the end of the assignment. The final completion report should provide details of all the work processes undertaken along with issues and challenges encountered during the process of implementation and recommendations for the future.

E. Tasks and Activities:

The required activities could be divided into 3 components:

- A) Tube-well drilling
- B) Small-scale water infrastructure construction and installation
- C) Operation and maintenance trainings for provided water infrastructures at project townships

Component A

The drilling activities shall include the following:

- Site visit and selection of a socially preferable location (including 2 alternate locations to use in case as needed) for each tube-well that satisfies the habitants in terms of usage convenience. This selection will be in presence of a member of Supervision firm. The final confirmation on site selection will be made in consultation with village water user group representatives, village tract authorities and head of village. Note that any deviation in distance from the currently assigned location for works shall not be more than 100 meters in distance from the selected location.
- Validation to ensure community ownership (agreement/document signed by concerned people including village water user group representatives and village tract/village authority)
- Preparation and protection of site with demarcation and fencing
- Initiating drilling activities
- Obtaining the validation with the supervision firm before installation of tube-well equipment
- Procurement of required materials and transport to required sites of villages to implement in priority list as per supervision firm's assessment and survey as well as field survey
- Technical Equipment of the tube-well (casing, gravel, cementing of the annular space)
- Development of the tube-well (air lifting)
- Preparation of the concrete platform
- Protection measure to protect infrastructure against theft/destruction
- Implementation and interpretation of pumping tests
- Installation of the pumping system (hand pump or immersed/submersible pump with generator, water tanks including civil works)
- First provisional acceptance (The borehole is drilled, declared positive regarding water yield, the concrete structure is completed and the well is secured with a padlock. The completion report is transmitted to Supervision firm).
- Final provisional acceptance (The completion report is validated by Supervision firm).
- Final definitive acceptance (after three week operation upon the final provisional acceptance and completion of component C)

The technical specifications for component A are detailed in **ANNEX 5**.

Indicative templates for pumping tests and geological-log are presented in **ANNEX 7**.

Component B

Small infrastructure activities include:

- Site visit and selection of a socially preferable location for any activities that satisfies the habitants in terms of usage convenience. This selection will be in presence of a member of Supervision firm -. The site selection will be made in consultation with village water user group representatives, village tract authorities and head of village.
- Validation of the activities to implement
- Production of detailed field drawings and plans (execution drawings) which refers to **Annex 2** (*The General Technical Specifications*), **Annex 3** (*The Technical Drawing Sheets*), and **Annex 4** (*The Technical Specifications for Small Infrastructure*) to be validated by the supervision firm..
- Procurement of required materials and transport to required sites as per supervision firm's assessment and survey.
- Implementation of civil works
- Implementation of plumbing works
- Final provisional acceptance (upon the first step provisional acceptance): The civil work is completed also plumbing and electromechanical works.
- Final provisional acceptance (The completion report is validated by Supervision firm).
- Final definitive acceptance (after three week operation upon the final provisional acceptance and 3 completion of component C)

Technical specifications for component B are detailed in **Annex 4** (*The Technical Specifications for Small Infrastructure*) and for component A and B are detailed in **Annex 2** (*The General Technical Specifications*); All technical drawings are presented in **Annex 3**.

Component C

-Operation and maintenance trainings for village water user group representatives at water facility activity beneficiary villages in the project townships

After the completion of installation, the Contractor is expected to deliver a one-day O&M training per township to the communities and those that are in charge of the infrastructure. At least 2 leaders of village water user groups should be invited. Women participation is encouraged. The training topics should be consulted with UNDP and may include general operational procedures, precautions, DOs and DON'Ts, maintenance and minor repair works, replacement of parts as well as recommended contacts for major repair works, collection and maintenance of user fees, book keeping (for both financial and operation/use of water facility) reporting to departments and organizations. The standard operating procedures should be printed in the form of booklets, brochures or bulletins and distributed to the concerned community members and government representatives.

F. Deliverables and Time Frame:

Please see attached **Suggested Activity Work Schedule attached as Annex 11**, however Bidders are required to submit their own Activity Work Schedule per region and to submit with technical bid.

G. Institutional Arrangement

Upon signing of the contract, the Contractor is expected to participate in a 2-day orientation meeting in Patheingyi, where UNDP and the (supervision firm) will provide an orientation session on the assignment,

as well as on its programming approaches, monitoring and reporting procedures. The Contractor is expected to provide the required technical personnel to participate in this orientation.

The Contractor will implement the work under the supervision and control of the supervision firm. The client, UNDP, will be associated for meetings and report validation.

Meetings will be held every month to report the completion of work. The supervision firm and the client will be present at these meetings.

The Contractor will be responsible to prepare meeting records and distribute to all participants.

The Contractor will inform regularly to UNDP and the supervision firm regarding all important working events and incidencies and ensures a good relation with local authorities at region level, township and village level as well as with communities and on ground implementation.

H. Duration of the Work

The estimated duration of the contract will be for 7 months from the time joining the orientation workshop, from **18th August 2017 to 17th March 2018** for each region.

- I. **Payment Schedule Under Each Package “Region”:** UNDP shall effect payments after acceptance and upon achievement of the corresponding milestones and for the following amounts:

#	Item / Description / Milestone	Payment Portion	Time
1.	Construction Works		
1.1	Work in Progress - field sites final confirmed, listing the needed materials per each sites and planned for procurement, Village WUGs formed and mobilized, (as per the point 1 to 5 mentioned at scope of work)	30%	1 ½ month after start of assignment
1.2	Work in Progress - required materials procured and transported to each of all sites to implement, (as per the point 6 mentioned at scope of work)	40%	2 ½ month after start of assignment
1.3	Work in Progress construction and installation of all the planned activities, (as per the point 7 to 9 mentioned at scope of work)	20%	5 ½ month after start of assignment
2.	Conducting of water quality tests and developing a set of recommendations for usage, Provision of Operation and Maintenance Trainings in Each Township And Submission of completion report		
2.1	Upon provision of operation and maintenance trainings for village water user group representatives from water facility activity beneficiary villages in the project townships, submission of water quality test results and recommendations, and final report for completion of the assignment, .. (as per the point 10 to 12 mentioned at the scope of work)	10%	7month after start of assignment

J. Location of Work

The construction works will take place in 5 townships:

1. Shwebo Township (Sagaing Region)
2. Monywa Township (Sagaing Region)
3. Myingyan Township (Mandalay Region)
4. Nyaung U Township (Mandalay Region)
5. Chauk Township (Magway Region)

The selected sites for all infrastructures are listed in ***“Annex 1 – Number of Units Required in Each Village Per Region”*** with ***“GPS coordinates and maps are available in Annex 6”***.

Section 4: Bid Submission Form²

(This should be written on the Letterhead of the Bidder. Except for indicated fields, no changes may be made in this template.)

Insert: Location

Insert: Date

To: [insert: Name and Address of UNDP focal point]

Dear Sir/Madam:

We, the undersigned, hereby offer to supply the goods and related services required for [insert: title of goods and services required as per ITB] in accordance with your Invitation to Bid dated Insert: bid date. We are hereby submitting our Bid (please include package name), which includes the Technical Bid and Price Schedule.

We hereby declare that:

- a) All the information and statements made in this Bid are true and we accept that any misrepresentation contained in it may lead to our disqualification;
- b) We are currently not on the removed or suspended vendor list of the UN or other such lists of other UN agencies, nor are we associated with, any company or individual appearing on the 1267/1989 list of the UN Security Council;
- c) We have no outstanding bankruptcy or pending litigation or any legal action that could impair our operation as a going concern; and
- d) We do not employ, nor anticipate employing, any person who is or was recently employed by the UN or UNDP.

We confirm that we have read, understood and hereby fully accept the Schedule of Requirements and Technical Specifications describing the duties and responsibilities required of us in this ITB, and the General Terms and Conditions of UNDP's Standard Contract for this ITB.

We agree to abide by this Bid for [insert: period of validity as indicated in Data Sheet].

We undertake, if our Bid is accepted, to initiate the supply of goods and provision of related services not later than the date indicated in the Data Sheet.

We fully understand and recognize that UNDP is not bound to accept this Bid, that we shall bear all costs associated with its preparation and submission, and that UNDP will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the evaluation.

² No deletion or modification may be made in this form. Any such deletion or modification may lead to the rejection of the Bid.

We remain,

Yours sincerely,

Authorized Signature [*In full and initials*]: _____

Name and Title of Signatory: _____

Name of Firm: _____

Contact Details: _____

[Please mark this letter with your corporate seal, if available]

Section 5: Documents Establishing the Eligibility and Qualifications of the Bidder

Bidder Information Form³

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

ITB No.: *[insert number of bidding process]*

Page _____ of _____ pages

1. Bidder's Legal Name <i>[insert Bidder's legal name]</i>		
2. In case of Joint Venture (JV), legal name of each party: <i>[insert legal name of each party in JV]</i>		
3. Actual or intended Country/ies of Registration/Operation: <i>[insert actual or intended Country of Registration]</i>		
4. Year of Registration in its Location: <i>[insert Bidder's year of registration]</i>		
5. Countries of Operation	6. No. of staff in each Country	7. Years of Operation in each Country
8. Legal Address/es in Country/ies of Registration/Operation: <i>[insert Bidder's legal address in country of registration]</i>		
9. Value and Description of Top three (3) Biggest Contract for the past two (2) years		
10. Latest Credit Rating (Score and Source, if any)		
11. Brief description of litigation history (disputes, arbitration, claims, etc.), indicating current status and outcomes, if already resolved.		
12. Bidder's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>		
13. Are you in the UNPD List 1267.1989 or UN Ineligibility List? <input type="checkbox"/> YES or <input type="checkbox"/> NO		
14. Attached are copies of original documents of: <input type="checkbox"/> All eligibility document requirements listed in the Data Sheet <input type="checkbox"/> If Joint Venture/Consortium – copy of the Memorandum of Understanding/Agreement or Letter of Intent to form a JV/Consortium, or Registration of JV/Consortium, if registered <input type="checkbox"/> If case of Government corporation or Government-owned/controlled entity, documents establishing legal and financial autonomy and compliance with commercial law.		

³ The Bidder shall fill in this Form in accordance with the instructions. Apart from providing additional information, no alterations to its format shall be permitted and no substitutions shall be accepted.

Joint Venture Partner Information Form (if Registered)⁴

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

ITB No.: *[insert number of bidding process]*

Page _____ of _____ pages

1. Bidder's Legal Name: <i>[insert Bidder's legal name]</i>		
2. JV's Party legal name: <i>[insert JV's Party legal name]</i>		
3. JV's Party Country of Registration: <i>[insert JV's Party country of registration]</i>		
4. Year of Registration: <i>[insert Party's year of registration]</i>		
5. Countries of Operation	6. No. of staff in each Country	7. Years of Operation in each Country
8. Legal Address/es in Country/ies of Registration/Operation: <i>[insert Party's legal address in country of registration]</i>		
9. Value and Description of Top (maximum) three (3) Biggest Contract for the past two (2) years		
10. Latest Credit Rating (if any): Click here to enter text.		
1. Brief description of litigation history (disputes, arbitration, claims, etc.), indicating current status and outcomes, if already resolved. Click here to enter text.		
13. JV's Party Authorized Representative Information Name: <i>[insert name of JV's Party authorized representative]</i> Address: <i>[insert address of JV's Party authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Party authorized representative]</i> Email Address: <i>[insert email address of JV's Party authorized representative]</i>		
14. Attached are copies of original documents of: <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> All eligibility document requirements listed in the Data Sheet <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 2. <input type="checkbox"/> In case of government owned entity, documents establishing legal and financial autonomy and compliance with commercial law.		

⁴ The Bidder shall fill in this Form in accordance with the instructions. Apart from providing additional information, No alterations to its format shall be permitted and no substitutions shall be accepted.

Section 6: Technical Bid Form⁵

For the Provision of Construction and Installation of small-scale water infrastructure in the Dry Zone of Myanmar

PLEASE INDICATE THE NAME OF THE REGION FOR WHICH THE COMPANY IS SUBMITTING AN OFFER	
Name of Bidding Organization / Firm:	
Year of Registration:	
Country of Registration:	
Number of Years of Experience in the Required Field under this ITB:	
Name of Contact Person for this Bid:	
Address:	
Phone / Fax:	
Email:	

- 1- Brief Description of Bidder as an Entity:** Provide a brief description of the organization / firm submitting the Bid, its legal mandates/authorized business activities, the year and country of incorporation, and approximate annual budget, etc. Include reference to reputation, or any history of litigation and arbitration in which the organisation / firm has been involved that could adversely affect or impact the delivery of goods and/or performance of related services, indicating the status/result of such litigation/arbitration.
- 2- Financial Capacity:** Please provide the audited financial statements for the last two years and fill in the Financial Capacity Form. A separate Financial Capacity Form needs to be filled in by the partnership or jointventure company if applicable. *(The Bidder shall fill in this Form in accordance with the Bidders Financial Statements for the last two years. Bidders shall provide their Financial Audited Statements also; No alterations to its format shall be permitted and no substitutions shall be accepted).*

Financial Information in USD	In Kyat		In USD	
	Historic Information for the Last Two Years in <u>Kyat</u> (if Applicable)		Historic Information for the Last Two Years in <u>USD Equivalent</u>	
	2016	2015	2016	2015
Information from the Balance Sheet				
Total Assets				
Total Liabilities				
Current Assets				
Inventory				
Cash and Cash Equivalents				
Accounts Receivable				
Current Liabilities				
Information from Income Statement				
Annual Turnover				
Profits Before Taxes				

⁵ Technical Bids not submitted in this format may be rejected.

- 3- Track Record and Background Experiences:** Provide project-relevant specific international, regional, local experience of the company and/or its staffs in similar assignments during the past Two (2) years (minimum 2 projects) completed and to be submitted in the following format.

For each project please attach supporting documents such as copy of contract, certificate of final completion ... etc.

Also, please note that UNDP has the full right to contact the mentioned contacts details of each submitted project to ensure the accuracy of the submitted data and the client's/supervisor recommendation for that project.

Please provide **List of Implemented Projects:**

Name of project		
Location of Project		
Client		
Contract Value		
Period of activity (please mention dates)		
Types of activities undertaken		
Status or Date Completed		
References Contact Details (Name, Phone, Email)		

Please provide **list of Ongoing Projects if any:**

Name of project				
Location of Project				
Client				
Contract Value				
Period of activity (please mention dates)				
Types of activities undertaken				
Status or Date Completed				
References Contact Details (Name, Phone, Email)				

- 4- Please provide the following required information:**

SECTION 6 – A: SCHEDULE OF NON-COMPLIANCE. (AS APPLICABLE)

SECTION 6 – B: SCHEDULE OF MANPOWER SERVICES AND QUALIFICATIONS OF KEY PERSONNEL. Provide the CVs for key personnel that will be provided to support the implementation of this project. CVs should demonstrate qualifications in area of expertise relevant to the Contract. Please use the attached CV format.

SECTION 6 – C: PLANT AND EQUIPMENT SCHEDULE: please confirm the provision of the the requested plant and equipment and mention if it is owned or hired. Please mention if the company will be using any other equipment.

SECTION 6 – D PROJECT ACTIVITY (WORK) SCHEDULE: please indicate activity and timeline for the required construction work in the form attached.

Technical specifications and scope of work: provide any information related to the required technical specifications and scope of work as applicable to the Statement of work and BoQ.

Subcontracting (if applicable): Explain whether any work would be subcontracted, to whom and how much percentage of the work and the roles of the sub contractor(s).

Partnerships (if applicable): Explain any partnerships with local, international or other organizations that are planned for the implementation of the project. Special attention should be given to providing a clear picture of the role of each entity and how everyone will function as a team. Letters of commitment from partners and an indication of whether some or all have successfully worked together on other previous projects is encouraged.

Technical Quality Assurance Mechanisms: Please indicate the quality assurance mechanisms that shall be used including indicating any quality assurance certificates as applicable.

SECTION 6 – A: SCHEDULE OF NON-COMPLIANCE

In this schedule the Bidder shall provide a list of deviations to the Scope of Works and/or Technical Specifications. Each deviation shall be referred to the relevant specification clause.

This should be written in the Letterhead of the Bidder. Except for indicated fields, no changes may be made in this format or layout

For the Provision of Construction and Installation of small-scale water infrastructure in the Dry Zone of Myanmar (Shwebo, Monywa, Myingyan, Nyaung U and Chauk)	
Annex No./Section No.	Non Compliance
Authorized Signature: <i>[In full and initials]</i> Date: <i>[Day/Month/Year]</i>	
<div style="border: 1px solid black; padding: 5px; text-align: center;">Company Stamp</div>	

The Bidder shall fill in this Form in accordance with the instructions. Apart from providing additional information, no alterations to its format shall be permitted and no substitutions shall be accepted.

SECTION 6 – B : MANPOWER SCHEDULE FOR EACH PACKAGE

Provide detailed information related to Manpower to be utilized on the project for EACH REGION

This should be written on the Letterhead of the Bidder.

Note: UNDP reserve the right to verify and obtain names of dedicated staff.

<u>MANPOWER SCHEDULE FOR PACKAGE A - SAGAING REGION</u>					
#	Item / Description	Number / Quantity			
		Minimum Quantity	Full Time	Partial Services	Total
A					
1	Project Manager “Civil Engineer”	1	1		
2	Hydrologist	1		1	
3	Drilling Foreman	2		2	
4	Civil Work Technician	1		1	
5	Electro Mechanic	1		1	
6	Socio-Economist	1		1	
7	Others (specify hereunder):				
B	Support Staff				
1	Township Coordinator	2		2	
2	Others (specify hereunder):				

<u>MANPOWER SCHEDULE FOR PACKAGE B - MANDALAY REGION</u>					
#	Item / Description	Number / Quantity			
		Minimum Quantity	Full Time	Partial Services	Total
A					
1	Project Manager “Civil Engineer”	1	1		
2	Hydrologist	1		1	
3	Drilling Foreman	1		1	
4	Civil Work Technician	1		1	
5	Electro Mechanic	1		1	
6	Socio-Economist	1		1	

7	Others (specify hereunder):				
B	Support Staff				
1	Township Coordinator	2		1	
2	Others (specify hereunder):				

<u>MANPOWER SCHEDULE FOR PACKAGE C - MAGWAY REGION</u>					
#	Item / Description	Number / Quantity			
		Minimum Quantity	Full Time	Partial Services	Total
A					
1	Project Manager “Civil Engineer”	1	1		
2	Hydrologist	1		1	
3	Drilling Foreman	1		1	
4	Civil Work Technician	1		1	
5	Electro Mechanic	1		1	
6	Socio-Economist	1		1	
7	Others (please specify hereunder):				
B	Support Staff				
1	Township Coordinator	1		1	
2	Others (specify hereunder):				

CV FORMAT:

Please provide the CV of each key personnel using the below format under each package:

Name:		
Role in Contract Implementation:		
Nationality:		
Contact information:		
Countries of Relevant Work Experience:		
Language Skills:		
Education and other Qualifications:		
Summary of Experience: <i>Highlight experience in the region and on similar projects.</i>		
Relevant Experience (From most recent):		
Period: From – To	Name of activity/ Project/ funding organisation, if applicable:	Job Title and Activities undertaken/Description of

		actual role performed:
<i>e.g. June 2010-January 2011</i>		
<i>Etc.</i>		
<i>Etc.</i>		
References (minimum of 3):	<i>Name</i> <i>Designation</i> <i>Organization</i> <i>Contact Information – Address; Phone; Email; etc.</i>	
Declaration: I confirm my intention to serve in the stated position and present availability to serve for the term of the proposed contract. I also understand that any wilful misstatement described above may lead to my disqualification, before or during my engagement.		
_____ Signature of the Nominated Team Leader/Member		_____ Date Signed

SECTION 6 – C: PLANT AND EQUIPMENT SCHEDULE UNDER EACH PACKAGE

Provide detailed information related to Plant and Equipment to be utilized on the project for
EACH REGION SEPERATELY

This should be written on the Letterhead of the Bidder.

Note: UNDP reserve the right to verify actual equipment

<u>PLANT AND EQUIPMENT SCHEDULE FOR SAGAING REGION</u>						
#	Item / Description	Minimum Quantity	Size / Capacity	Number / Quantity		
				Owned	Hired	Total
1	dump truck	1				
2	pick-up 4x4	1				
3	drilling machines with all equipment (rotary rigs, water truck, sludge system, and percussive rigs)	1				
4	Other (please add rows as necessary)					
Authorized Signature: <i>[In full and initials]</i>					Company Stamp	
Date: <i>[Day/Month/Year]</i>						

<u>PLANT AND EQUIPMENT SCHEDULE FOR MANDALAY REGION</u>						
#	Item / Description	Minimum Quantity	Size / Capacity	Number / Quantity		
				Owned	Hired	Total
1	dump truck	1				
2	pick-up 4x4	1				
3	drilling machines with all equipment (rotary rigs, water truck, sludge system, and percussive rigs)	1				
4	Other (please add rows as necessary)					
Authorized Signature: <i>[In full and initials]</i>					Company Stamp	
Date: <i>[Day/Month/Year]</i>						

<u>PLANT AND EQUIPMENT SCHEDULE FOR MAGWAY REGION</u>						
#	Item / Description	Minimum Quantity	Size / Capacity	Number / Quantity		
				Owned	Hired	Total
1	dump truck	1				
2	pick-up 4x4	1				
3	drilling machines with all equipment (rotary rigs, water truck, sludge system, and percussive rigs)	1				
4	Other (please add rows as necessary)					
Authorized Signature: <i>[In full and initials]</i>					Company Stamp	
Date: <i>[Day/Month/Year]</i>						

Apart from providing additional information, no alterations to its format shall be permitted and no substitutions shall be accepted

SECTION 6 – D: PROJECT ACTIVIRY (WORK) SCHEDULE UNDER EACH REGION

The Bidder shall submit the anticipated Programme for the Works reflecting all activities of the project **for EACH PACKAGE SEPERATELY.**

This should be written on the Letterhead of the Bidder. Except for indicated fields, no changes may be made in this format or layout

Note: The contract period is maximum 7 calendar months from date of Contract Award all activities shall reflect completion accordingly

#	Activity / Description	Dates		Duration in Months from Contract Award						
		Start	Compl ete	1	2	3	4	5	6	7
1.										
2.										
3.										
4.										
5.										
6.										
7.										
8.										
9.										
10.										
11.										
12.										

Apart from providing additional information, no alterations to its format shall be permitted and no substitutions shall be accepted.

Section 7: Price Schedule Form

Electronic Bill formats in Excel is attached. Electronic format bills of quantities (BoQ) must be used by tenderers to price their bills of quantities. Bidder shall submit BoQs both electronically and in hard copy signed format. In case of any discrepancy between the soft and the hard copies, the hard copy shall prevail.

UNDP, during evaluation stage, shall ensure that the content of said bills of quantities is unaltered and that it remains identical to that of the original bills of quantities. In case of any discrepancy between the priced BoQ submitted by the bidder and the original bills of quantities, as posted by UNDP online, then the original version shall prevail. In case of any alteration (change, addition, modification or deletion) in the original BoQ, then this shall cause rejection of the bid.

Important: In case that any manufacturers names, trade names, brand names or catalogue numbers used in the specifications are for the purpose of describing and establishing general performance and quality levels. Such references are not intended to be restrictive. Bids are invited on these and comparable brands or products provided the quality of the proposed products meet or exceed the quality of the specifications listed for any item.

Important Note: Submitting an offer for one, two or all three PACKAGES is allowed. Bidders who wish to quote for all PAKCAGES are welcomed to do so, however evaluation for each PACKAGE shall be done separately, therefore, bidders who wish to submit an offer for more than one PACKAGE **need to submit a separate Offer for each PACKAGE and indicate clearly which PACKAGE they are submitting an offer for.**

<u>PACKAGE A – Sagaing Region</u>		
LOT No.	Description of Item	Total Price in USD or in the Local Currency for National Companies (Please indicate the currency)
LOT 1	Shwebo Township : 11 Communal Water Tanks; 10 Shallow Tube Wells; Rehabilitation of 1 Deep Tube Well; 70 Water Pumping Systems for irrigation	
LOT 2	Monywa Township : 16 Communal Water Tanks; 10 Shallow Tube Wells; Rehabilitation of 2 Deep Tube Wells	
GRAND TOTAL PACKAGE PRICE IN “Please insert currency):.....		

<u>PACKAGE B – Mandalay Region</u>		
LOT No.	Description of Item	Total Price in USD or in the Local Currency for National Companies (please indicate the currency)
LOT 3	Myingyan Township : 6 Communal Water Tanks	
LOT 4	Nyaung U Township : 12 Communal Water Tanks; 4 Deep Tube Wells	
GRAND TOTAL PACKAGE PRICE IN “Please insert currency):.....		

<u>PACKAGE C– Magway Region</u>		
LOT No.	Description of Item	Total Price in USD or in the Local Currency for National Companies (please indicate the currency)
LOT 5	Chauk Township : 11 Communal Water Tanks; 5 Deep Tube Wells	
GRAND TOTAL PACKAGE PRICE IN “Please insert currency):.....		

Section 8: FORM FOR PERFORMANCE SECURITY⁶

***(This must be finalized using the official letterhead of the Issuing Bank.
Except for indicated fields, no changes may be made in this template.)***

To: UNDP
[Insert contact information as provided in Data Sheet]

WHEREAS.....[INSERT NAME AND ADDRESS OF THE CONTRACTOR] (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No....., dated....., to execute.....[INSERT TITLE OF CONTRACT AND BRIEF DESCRIPTION OF WORKS], (hereinafter called "the Contract");

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

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

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

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

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

This guarantee shall be valid until twenty eight calendar days after issuance of the Certificate of Final Completion.

SIGNATURE AND SEAL OF THE GUARANTOR

.....

NAME OF BANK

ADDRESS

DATE

⁶ If the ITB requires the submission of a Performance Security, which shall be made a condition to the signing and effectivity of the contract, the Performance Security that the Bidder's Bank will issue shall use the contents of this template

Section 9:

Model Contract for Civil Works with General Terms and Conditions



Date _____

Dear Sir/Madam,

Ref.: _____/_____/_____ **[INSERT PROJECT NUMBER AND TITLE]**

The United Nations Development Programme (hereinafter referred to as "UNDP"), wishes to engage your company, duly incorporated under the Laws of _____ **[INSERT NAME OF THE COUNTRY]** (hereinafter referred to as the "Contractor") in order to perform _____ **[INSERT SUMMARY DESCRIPTION OF THE WORKS]** (hereinafter referred to as the "Works"), in accordance with the following Contract:

1. Contract Documents

- 1.1 This Contract is subject to the UNDP General Conditions for Civil Works, _____ **[INSERT REVISION NUMBER AND DATE FROM THE CONTRACTS DOCUMENTS LIBRARY]**, attached hereto as Annex I. The provisions of such Annex shall control the interpretation of this Contract and in no way shall be deemed to have been derogated by the contents of this letter and any other Annexes, unless otherwise expressly stated under section 4 of this letter, entitled "Special Conditions".
- 1.2 The Contractor and UNDP also agree to be bound by the provisions contained in the following documents, which shall take precedence over one another in case of conflict in the following order:
- a) this letter;
 - b) the Technical Specifications and Drawings [ref.dated.....], attached hereto as Annex II;
 - c) the Contractor's Tender _____ **[IF THE CONTRACT IS ON THE BASIS OF UNIT PRICE, INSERT: including the Priced Bill of Quantities]** [ref....., dated], as clarified by the agreed minutes of the negotiation meeting⁷ [dated.....], not attached hereto but known to and in the possession of both parties.

⁷ If there are updates to the technical proposal or correspondence exchanged in clarification of certain aspects, reference them too, provided that they are acceptable to UNDP. Otherwise, aspects which resolution is pending should be dealt with in this letter itself or in the Technical Specifications/Drawings, as appropriate.

- 1.3 All the above shall form the Contract between the Contractor and UNDP, superseding the contents of any other negotiations and/or agreements, whether oral or in writing, pertaining to the subject of this Contract.

[INSERT NAME AND ADDRESS OF
THE CONTRACTOR]

2. Obligations of the Contractor

- 2.1 The Contractor shall commence work within ____ [INSERT NUMBER OF DAYS] days from the date on which he shall have been given access to the Site and received the notice to commence from the Engineer, and shall perform and substantially complete the Works by .././.... [INSERT DATE], in accordance with the Contract. The Contractor shall provide all materials, supplies, labour and other services necessary to that end.
- 2.2 The Contractor shall submit to the Engineer the Programme of Work referred to in Clause 13 of the General Conditions by .././.... [INSERT DATE].
- 2.3 The Contractor represents and warrants the accuracy of any information or data provided to UNDP for the purpose of entering into this Contract, as well as the quality of the Works foreseen under this Contract in accordance with the highest industrial and professional standards.

OPTION 1 (FIXED PRICE)

3. Price and Payment⁸

- 3.1 In full consideration of the complete and satisfactory performance of the Works under this Contract, UNDP shall pay the Contractor a fixed contract price of _____ [INSERT CURRENCY & AMOUNT IN FIGURES AND WORDS].
- 3.2 The price of this Contract is not subject to any adjustment or revision because of price or currency fluctuations or the actual costs incurred by the Contractor in the performance of the Contract.
- 3.3 Invoices shall be submitted by the Contractor to the Engineer upon achievement of the corresponding milestones and for the following amounts:

<u>MILESTONE</u> ⁹	<u>AMOUNT</u>	<u>DATE</u>
Upon signature of Contract/./....
....././....
Upon substantial completion of Works/./....
Upon final		

⁸ This version of section 3 is to be used for fixed price contracts. Fixed price contracts should normally be used when it is possible to estimate with reasonable accuracy the costs of the activities which are the subject of the Contract.

⁹ In the case of advance payments, the amount should not exceed 15%.

completion of Works/./.....

OPTION 2 (COST REIMBURSEMENT)

3. Price and payment

- 3.1 The total estimated price of the Contract is contained in the Bill of Quantities and amounts to _____ **[INSERT CURRENCY & AMOUNT IN FIGURES AND WORDS]**.
- 3.2 The final price of the Contract will be determined on the basis of the actual quantities of work and materials utilized in the complete and satisfactory performance of the Works as certified by the Engineer and the unit prices contained in the Contractor's financial proposal. Such unit prices are fixed and are not subject to any variation whatsoever.
- 3.3 If the Contractor foresees that the final price of the Contract may exceed the total estimated price contained in 3.1 above, he shall so inform the Engineer without delay, in order for UNDP to decide, at its discretion, to increase the estimated price of the Contract as a result of a larger quantity of work/material or to reduce the quantity of work to be performed or materials to be used. UNDP shall not be responsible for payment of any amount in excess of that stipulated in 3.1 above unless this latter amount has been increased by means of a written amendment of this Contract in accordance with its paragraph 8 below.
- 3.4 The Contractor shall submit an invoice for _____ **[INSERT AMOUNT AND CURRENCY OF THE ADVANCE PAYMENT IN FIGURES & WORDS]** upon signature of this Contract by both parties, invoices for the work performed and materials utilized every _____ **[INSERT PERIOD OF TIME OR MILESTONES]** and a final invoice within 30 days from the issuance of the Certificate of Substantial Completion by the Engineer.¹⁰

[THE FOLLOWING CLAUSES ARE COMMON TO OPTIONS 1 & 2 AND MUST BE NUMBERED ACCORDING TO THE OPTION CHOSEN FOR ARTICLE 3]

- 3.@ UNDP shall effect payment of the invoices after receipt of the certificate of payment issued by the Engineer, approving the amount contained in the invoice. The Engineer may make corrections to that amount, in which case UNDP may effect payment for the amount so corrected. The Engineer may also withhold invoices if the work is not performed at any time in accordance with the terms of the Contract or if the necessary insurance policies or performance security are not valid and/or in order. The Engineer shall process the invoices submitted by the Contractor within 15 days of their receipt.
- 3.@ Payments effected by UNDP to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNDP of the Contractor's performance of the Works.
- 3.@ Payment of the final invoice shall be effected by UNDP after issuance of the Certificate of Final Completion by the Engineer.

4. Special conditions¹¹

¹⁰ In the case of advance payments, the amount should not exceed 15%.

¹¹ Under this Section, the Programme Officer may propose special clauses in order to adapt the model contract to the specific situation. In this sample clause 4, several clauses of common use are given. If they are not required, they should be deleted.

- 4.1 The advance payment to be made upon signature of the contract by both parties is contingent upon receipt and acceptance by UNDP of a bank guarantee ¹²for the full amount of the advance payment issued by a Bank and in a form acceptable to UNDP.¹³
- 4.2 The amounts of the payments referred to under section 3.6 above shall be subject to a deduction of _____ **[INSERT PERCENTAGE OF TOTAL CONTRACT PRICE THAT THE ADVANCE REPRESENTS]** % (... percent) of the amount accepted for payment until the cumulative amount of the deductions so effected shall equal the amount of the advance payment.¹⁴ Should the cumulative amount of the deductions so made be lower than the amount of the advance payment after the date of substantial completion of the Works, UNDP may deduct the amount equal to the difference between the advance payment and the cumulative deductions from the payments due after substantial completion or may recover such amount from the bank guarantee referred to in 4.1 above.
- 4.3 The Performance **[SELECT BOND/GUARANTEE]** referred to in Clause 10 of the General Conditions shall be submitted by the Contractor for an amount of _____ **[INSERT -PERCENTAGE OF THE TOTAL]**

ESTIMATED OR FIXED PRICE OF THE CONTRACT IN THE CASE OF A GUARANTEE AND 30% IN THE CASE OF A BOND].¹⁵

- 4.4 ***[THE USE OF THIS CLAUSE REQUIRES APPROVAL BY THE PROJECT DIRECTOR/UNDP PROGRAMME OFFICER]*** The Contractor may submit invoices for materials and plant stored at the Site, provided they are necessary and adequate for the performance of the Works and they are protected from weather conditions and duly insured as per the instructions of the Engineer.
- 4.5 The liability insurance referred to in Clause 23 of the General Conditions shall be taken out by the Contractor for an amount of.....**[CONSULT THE ENGINEER FOR APPROPRIATE AMOUNT].**
- 4.6 According to Clause 45 of the General Conditions, the liquidated damages for delay shall be ____ **[INSERT PERCENTAGE]** of the price of the Contract per week of delay, up to a maximum of 10% of the final price of the Contract.

5. Submission of invoices

- 5.1 One original and one copy of every invoice shall be submitted by mail by the Contractor for each payment under the Contract to the Engineer's address specified in clause 8.2.
- 5.2 Invoices submitted by fax shall not be accepted by UNDP.

6. Time and manner of payment

¹² If the legislation of the Country of the Contractor forbids the use of bank guarantees, a bond may be accepted.

¹³ This clause must be used when an advance payment of \$50,000 or more is granted to the Consultant..

¹⁴ This clause must be used when an advance payment is granted (whatever the amount) in a cost reimbursement contract.

¹⁵ The reason for the distinction between a 10% bank guarantee and a 30% performance bond is that bank guarantees are generally unconditional and can be called directly without proof of nonperformance, whereas most performance bonds are conditional and require some proof of nonperformance. There are usually additional costs and time delays incurred with cashing a performance bond and so a higher percentage is requested to cover the extra work involved. Some banks outside of the U.S. may call certain guarantee instruments, "performance bonds or guarantees" although they may only be conditional guarantees. It is important to review the text of the instrument to determine whether it is a conditional or unconditional guarantee.

6.1 Invoices shall be paid within thirty (30) days of the date of their receipt and acceptance by UNDP.

6.2 All payments shall be made by UNDP to the following Bank account of the Contractor:

_____ [NAME OF THE BANK]

_____ [ACCOUNT NUMBER]

_____ [ADDRESS OF THE BANK]

7. Modifications

7.1 Any modification to this Contract shall require an amendment in writing between both parties duly signed by the authorized representatives of the Contractor and UNDP.

8. Notifications

8.1 For the purpose of notifications under the Contract, the addresses of UNDP and the Contractor are as follows:

For the UNDP:

_____ [INSERT NAME OF RR OR
DIVISION CHIEF]
Chief
United Nations Development Programme

Ref. ____/____/____ [INSERT CONTRACT REFERENCE & NUMBER]

Telex: _____

Fax: _____

Cable: _____

For the Contractor:

[Insert Name, Address and Telex,
Fax and Cable Numbers]

8.2 For the purposes of communications with the Engineer, the address of the Engineer shall be as follows:

[Insert Name, Address and Telex,
Fax and Cable Numbers of the Engineer]

OR

8.2 UNDP shall communicate as soon as possible to the Contractor after the signature of the Contract, the address of the Engineer for the purposes of communication with the Engineer under the Contract.

If the above terms and conditions meet with your agreement as typed in this letter and in the Contract Documents, please initial every page of this letter and its attachments and return to this office one original of this Contract, duly signed and dated.

Yours sincerely,

[INSERT NAME OF RR or Bureau/Division Director]

For [Insert name of the company/organization]

Agreed and Accepted:

Signature _____

Name _____

Title _____

Date _____

UNDP GENERAL CONDITIONS OF CONTRACT FOR WORKS

Content

1. Definitions
2. Singular and Plural
3. Headings or Notes
4. Legal Relationships
5. General Duties/Powers of Engineer
6. Contractor's General Obligations/Responsibilities
7. Assignment and Subcontracting
8. Drawings
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10. Performance Security
11. Inspection of Site
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13. Programme of Work to be furnished
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21. Insurance of Works, Etc.
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32. Contractor to Keep Site Clean
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35. Returns of Labor, Plant, Etc.
36. Materials, Workmanship and Testing
37. Access to Site
38. Examination of Work Before Covering Up
39. Removal of Improper Work and Materials
40. Suspension of Work
41. Possession of Site
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43. Extension of Time for Completion
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48. Alterations, Additions and Omissions
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50. Approval of Materials, Etc., Not Implied
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52. Liability of the Parties
53. Authorities
54. Urgent Repairs
55. Increase and Decrease of Costs
56. Taxation
57. Blasting
58. Machinery
59. Temporary Works and Reinstatement
60. Photographs and Advertising
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63. Notices
64. Language, Weights and Measures
65. Records, Accounts, Information and Audit
66. Force Majeure
67. Suspension by UNDP
68. Termination by UNDP
69. Termination by the Contractor
70. Rights and Remedies of UNDP
71. Settlement of Disputes
72. Privileges and Immunities

1. DEFINITIONS

For the purpose of the Contract Documents the words and expressions below shall have the following meanings:

- a) "Employer" means the United Nations Development Programme (UNDP).
- b) "Contractor" means the person whose tender has been accepted and with whom the Contract has been entered into.
- c) "Engineer" means the person whose services have been engaged by UNDP to administer the Contract as provided therein, as will be notified in writing to the Contractor.
- d) "Contract" means the written agreement between the Employer and the Contractor, to which these General Conditions are annexed.
- e) "The Works" means the works to be executed and completed under the Contract.
- f) "Temporary Works" shall include items to be constructed which are not intended to be permanent and form part of the Works.
- g) "Drawings" and "Specifications" mean the Drawings and Specifications referred to in the Contract and any modification thereof or addition thereto furnished by the Engineer or submitted by the Contractor and approved in writing by the Engineer in accordance with the Contract.
- h) "Bill of Quantities" is the document in which the Contractor indicates the cost of the Works, on the basis of the foreseen quantities of items of work and the fixed unit prices applicable to them.
- i) "Contract Price" means the sum agreed in the Contract as payable to the Contractor for the execution and completion of the Works and for remedying of any defects therein in accordance with the Contract.
- j) "Site" means the land and other places on, under, in or through which the Works or Temporary Works are to be constructed.

2. SINGULAR AND PLURAL

Words importing persons or parties shall include firms or companies and words importing the singular only shall also include the plural and vice versa where the context requires.

3. HEADINGS OR NOTES

The headings or notes in the Contract Documents shall not be deemed to be part thereof or be taken into consideration in their interpretation.

4. LEGAL RELATIONSHIPS

The Contractor and the sub-contractor(s), if any, shall have the status of an independent contractor vis-à-vis the Employer. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Engineer and the Contractor, but the Engineer shall, in the exercise of his duties and powers under the Contract, be entitled to performance by the Contractor of its obligations, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Employer or the Engineer and any subcontractor(s) of the Contractor.

5. GENERAL DUTIES/POWERS OF ENGINEER

- a) The Engineer shall provide administration of Contract as provided in the Contract Documents. In particular, he shall perform the functions hereinafter described.
- b) The Engineer shall be the Employer's representative vis-à-vis the Contractor during construction and until final payment is due. The Engineer shall advise and consult with the Employer. The Employer's instructions to the Contractor shall be forwarded through the Engineer. The Engineer shall have authority to act on behalf of the Employer only to the extent provided in the Contract Documents as they may be amended in writing in accordance with the Contract. The duties, responsibilities and limitations of authority of the Engineer as the Employer's representative during construction as set forth in the Contract shall not be modified or extended without the written consent of the Employer, the Contractor and the Engineer.
- c) The Engineer shall visit the Site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Works and to determine in general if the Works are proceeding in accordance with the Contract Documents. On the basis of his on-site observations as an Engineer, he shall keep the Employer informed of the progress of the Works.
- d) The Engineer shall not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Works or the Temporary Works. The Engineer shall not be responsible for or have control or charge over the acts or omissions of the Contractor (including the Contractor's failure to carry out the Works in accordance with the Contract) and of Sub-contractors or any of their agents or employees, or any other persons performing services for the Works, except if such acts or omissions are caused by the Engineer's failure to perform his functions in accordance with the contract between the Employer and the Engineer.
- e) The Engineer shall at all times have access to the Works wherever and whether in preparation or progress. The Contractor shall provide facilities for such access so that the Engineer may perform his functions under the Contract.

- f) Based on the Engineer's observations and an evaluation of the documentation submitted by the Contractor together with the invoices, the Engineer shall determine the amounts owed to the Contractor and shall issue Certificates for Payment as appropriate.
- g) The Engineer shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformity with the design concept of the Works and with the provisions of the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- h) The Engineer shall interpret the requirements of the Contract Documents and judge the performance there under by the Contractor. All interpretations and orders of the Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. Either party may make a written request to the Engineer for such interpretation. The Engineer shall render the interpretation necessary for the proper execution of the Works with reasonable promptness and in accordance with any time limit agreed upon. Any claim or dispute arising from the interpretation of the Contract Documents by the Engineer or relating to the execution or progress of the Works shall be settled as provided in Clause 71 of these General Conditions.
- i) Except as otherwise provided in the Contract, the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract nor to order any work involving delay in completion of the Works or any extra payment to the Contractor by the Employer, or to make any variations to the Works.
- j) In the event of termination of the employment of the Engineer, the Employer shall appoint another suitable professional to perform the Engineer's duties.
- k) The Engineer shall have authority to reject work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the work whether or not such work be then fabricated, installed or completed. However, neither the Engineer's authority to act nor any reasonable decision made by him in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any subcontractor, any of their agents or employees, or any other person performing services for the Works.
- l) The Engineer shall conduct inspections to determine the dates of Substantial Completion and Final Completion, shall receive and forward to the Employer for the Employer's review written warranties and related documents required by the Contract and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of Clause 47 hereof and in accordance with the Contract.
- m) If the Employer and Engineer so agree, the Engineer shall provide one or more Engineer's Representative(s) to assist the Engineer in carrying out his responsibilities at the site. The

Engineer shall notify in writing to the Contractor and the Employer the duties, responsibilities and limitations of authority of any such Engineer's Representative(s).

6. CONTRACTOR'S GENERAL OBLIGATIONS/RESPONSIBILITIES

6.1.Obligation to Perform in Accordance with Contract

The Contractor shall execute and complete the Works and remedy any defects therein in strict accordance with the Contract, with due care and diligence and to the satisfaction of the Engineer, and shall provide all labor, including the supervision thereof, materials, Constructional Plant and all other things, whether of a temporary or permanent nature, required in and for such execution, completion and remedying of defects, as far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract. The Contractor shall comply with and adhere strictly to the Engineer's instructions and directions on any matter, touching or concerning the Works.

6.2 Responsibility for Site Operations

The Contractor shall take full responsibility for the adequacy, stability and safety of all site operations and methods of construction, provided that the Contractor shall not be responsible, except as may be expressly provided in the Contract, for the design or specification of the Permanent Works or of any Temporary Works prepared by the Engineer.

6.3.Responsibility for Employees

The Contractor shall be responsible for the professional and technical competence of his employees and will select for work under this Contract, reliable individuals who will perform effectively in the implementation of the Contract, respect local customs and conform to a high standard of moral and ethical conduct.

6.4.Source of Instructions

The Contractor shall neither seek nor accept instructions from any authority external to the Employer, the Engineer or their authorized representatives in connection with the performance of his services under this Contract. The Contractor shall refrain from any action which may adversely affect the Employer and shall fulfill his commitments with fullest regard for the interest of the Employer.

6.5.Officials Not to Benefit

The Contractor warrants that no official of the Employer has been or shall be admitted by the Contractor to any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of the Contract.

6.6. Use of Name, Emblem or Official Seal of UNDP or the United Nations

The Contractor shall not advertise or otherwise make public the fact that he is performing, or has performed services for the Employer or use the name, emblem or official seal of the Employer or the United Nations or any abbreviation of the name of the Employer or the United Nations for advertising purposes or any other purposes.

6.7. Confidential Nature of Documents

All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under the Contract shall be the property of the Employer, shall be treated as confidential and shall be delivered only to the duly authorized representative of the Employer on completion of the Works; their contents shall not be made known by the Contractor to any person other than the personnel of the Contractor performing services under this Contract without the prior written consent of the Employer.

7. ASSIGNMENT AND SUBCONTRACTING

7.1. Assignment of Contract

The Contractor shall not, except after obtaining the prior written approval of the Employer, assign, transfer, pledge or make other disposition of the Contract or any part thereof or of any of the Contractor's rights, claims or obligations under the Contract.

7.2. Subcontracting

In the event the Contractor requires the services of subcontractors, the Contractor shall obtain the prior written approval of the Employer for all such subcontractors. The approval of the Employer shall not relieve the Contractor of any of his obligations under the Contract, and the terms of any subcontract shall be subject to and be in conformity with the provisions of the Contract.

7.3. Assignment of Subcontractor's Obligations

In the event of a subcontractor having undertaken towards the Contractor in respect of the work executed or the works, materials, Plant or services supplied by such subcontractor for the Works, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall at any time after the expiration of such Period, assign to the Employer, at the Employer's request and cost, the benefit of such obligation for the unexpired duration thereof.

8. DRAWINGS

8.1. Custody of drawings

The drawings shall remain in the sole custody of the Employer but two (2) copies thereof shall be furnished to the Contractor free of cost. The Contractor shall provide and make at his own expense any further copies required by him. At the completion of the Works, the Contractor shall return to the Employer all drawings provided under the Contract.

8.2. One copy of Drawings to be kept on Site

One copy of the Drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and by any other person authorized in writing by the Engineer.

8.3. Disruption of Progress

The Contractor shall give written notice to the Engineer whenever planning or progress of the Works is likely to be delayed or disrupted unless any further drawing or order, including a direction, instruction or approval, is issued by the Engineer within a reasonable time. The notice shall include details of drawing or order required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

9. WORK BOOK

The Contractor shall maintain a Work Book at the Site with numbered pages, in one original and two copies. The Engineer shall have full authority to issue new orders, drawings and instructions to the Contractor, from time to time and as required for the correct execution of the Works. The Contractor shall be bound to follow such orders, drawings and instructions.

Every order shall be dated and signed by the Engineer and the Contractor, in order to account for its receipt.

Should the Contractor want to refuse an order in the Work Book, he shall so inform the Employer, through the Engineer, by means of an annotation in the Work Book made within three (3) days from the date of the order that the Contractor intends to refuse. Failure by the Contractor to adhere to this procedure shall result in the order being deemed accepted with no further possibility of refusal.

The original of the Work Book shall be delivered to the Employer at the time of Final Acceptance of the Works. A copy shall be kept by the Engineer and another copy by the Contractor.

10. PERFORMANCE SECURITY

- a) As guarantee for his proper and efficient performance of the Contract, the Contractor shall on signature of the Contract furnish the Employer with a Performance Security issued for the benefit of the Employer. The amount and character of such security (bond or guarantee) shall be as indicated in the Contract.

- b) The Performance Bond or Bank Guarantee must be issued by an acceptable insurance company or accredited bank, in the format included in Appendix I to these General Conditions, and must be valid up to twenty-eight days after issuance by the Engineer of the Certificate of Final Completion. The Performance Bond or Bank Guarantee shall be returned to the Contractor within twenty-eight days after the issuance by the Engineer of the Certificate of Final Completion, provided that the Contractor shall have paid all money owed to the Employer under the Contract.
- c) If the surety of the Performance Bond or Bank Guarantee is declared bankrupt or becomes insolvent or its right to do business in the country of execution of the Works is terminated, the Contractor shall within five (5) days thereafter substitute another bond or guarantee and surety, both of which must be acceptable to the Employer.

11. INSPECTION OF SITE

The Contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself before submitting his Tender and signing the Contract as to all matters relative to the nature of the land and subsoil, the form and nature of the Site, details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services, the quantities and nature of the work and materials necessary for the completion of the Works, the means of access to the Site, and the accommodation he may require, and in general to have himself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his Tender, and no claims will be entertained in this connection against the Employer.

12. SUFFICIENCY OF TENDER

The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Tender for the construction of the Works and of the rates and prices, which rates and prices shall, except in so far as it is otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper execution and completion of the Works.

13. PROGRAMME OF WORK TO BE FURNISHED

Within the time limit specified in the Contract, the Contractor shall submit to the Engineer for his consent a detailed Programme of Work showing the order of procedure and the method in which he proposes to carry out the Works. In preparing his Programme of Work the Contractor shall pay due regard to the priority required by certain works. Should the Engineer, during the progress of work, require further modifications to the Programme of Work, the Contractor shall review the said program. The Contractor shall also whenever required by the Engineer submit particulars in writing of the Contractor's arrangements for carrying out the Works and of the Constructional Plant and Temporary Works which the Contractor intends to supply, use or construct as the case may be. The submission of such program, or any modifications thereto, or the particulars required by the Engineer, shall not relieve the Contractor of any of his duties

or obligations under the Contract nor shall the incorporation of any modification to the Programme of Work either at the commencement of the contract or during its course entitle the Contractor to any additional payments in consequence thereof.

14. WEEKLY SITE MEETING

A weekly site meeting shall be held between UNDP Project Coordinator or engineer, if any, the representative of the Contractor and the Engineer or the Engineer's Representative, in order to verify that the Works are progressing normally and are executed in accordance with the Contract.

15. CHANGE ORDERS

- a) The Engineer may instruct the Contractor, with the approval of the Employer and by means of Change Orders, all variations in quantity or quality of the Works, in whole or in part, that are deemed necessary by the Engineer.
- b) Processing of change orders shall be governed by clause 48 of these General Conditions.

16. CONTRACTOR'S SUPERINTENDENCE

The Contractor shall provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfillment of the Contractor's obligations under the Contract. The Contractor or a competent and authorized agent or representative of the Contractor approved in writing by the Engineer, which approval may at any time be withdrawn, shall be constantly on the site and shall devote his entire time to the superintendence of the Works. Such authorized agent or representative shall receive on behalf of the Contractor directions and instructions from the Engineer. If the approval of such agent or representative shall be withdrawn by the Engineer, as provided in Clause 17(2) hereinafter, or if the removal of such agent or representative shall be requested by the Employer under Clause 17(3) hereinafter, the Contractor shall as soon as it is practicable after receiving notice of such withdrawal remove the agent or representative from the Site, and replace him by another agent or representative approved by the Engineer. Notwithstanding the provision of Clause 17(2) hereinafter, the Contractor shall not thereafter employ, in any capacity whatsoever, a removed agent or representative again on the Site.

17. CONTRACTOR'S EMPLOYEES

- a) The Contractor shall provide and employ on the Site in connection with the execution and completion of the Works and the remedying of any defects therein:
 - i. Only such technical assistants as are skilled and experienced in their respective callings and such sub-agent foremen and leading hands as are competent to give proper supervision to the work they are required to supervise, and

- ii. Such skilled, semi-skilled, and unskilled labour as is necessary for the proper and timely execution and completion of the Works.
- b) The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person employed by the Contractor in or about the execution or completion of the Works, who in the opinion of the Engineer is misconducting himself, or is incompetent or negligent in the proper performance of his duties, or whose employment is otherwise considered reasonably by the Engineer to be undesirable, and such person shall not be again employed on the Site without the written permission of the Engineer. Any person so removed from the Works shall be replaced as soon as reasonably possible by a competent substitute approved by the Engineer.
- c) Upon written request by the Employer, the Contractor shall withdraw or replace from the Site any agent, representative or other personnel who does not conform to the standards set forth in paragraph (1) of this Clause. Such request for withdrawal or replacement shall not be considered as termination in part or in whole of this Contract. All costs and additional expenses resulting from any withdrawal or replacement for whatever reason of any of the Contractor's personnel shall be at the Contractor's expense.

18. SETTING-OUT

The Contractor shall be responsible for the true and proper setting out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing and for the correctness of the position, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labor in connection therewith. If, at any time during the progress of the Works, any error shall appear or arise in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the Engineer, shall, at his own cost, rectify such error to the satisfaction of the Engineer.

19. WATCHING AND LIGHTING

The Contractor shall in connection with the Works provide and maintain at his own cost all lights, guards, fencing and watching when and where necessary or required by the Engineer or by any duly constituted authority for the protection of the Works and the materials and equipment utilized there for or for the safety and convenience of the public or others.

20. CARE OF WORKS

- a) From the commencement date of the Works to the date of substantial completion as stated in the Certificate of Substantial Completion, the Contractor shall take full responsibility for the care thereof and of all Temporary Works. In the event that any damage or loss should happen to the Works or to any part thereof or to any Temporary Works from any cause whatsoever (save and except as shall be due to Force Majeure as defined in Clause 66 of these General Conditions), the Contractor shall at his own cost repair and make good the same so that, at completion, the Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract and the Engineer's instructions. The Contractor shall

also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations Clause 47 hereof.

- b) The Contractor shall be fully responsible for the review of the Engineering design and details of the Works and shall inform the Employer of any mistakes or incorrectness in such design and details which would affect the Works.

21. INSURANCE OF WORKS, ETC.

Without limiting his obligations and responsibilities under Clause 20 hereof, the Contractor shall insure immediately following signature of this Contract, in the joint names of the Employer and the Contractor (a) for the period stipulated in Clause 20(1) hereof, against all loss or damage from whatever cause arising, other than cause of Force majeure as defined in clause 66 of these General Conditions, and (b) against loss or damage for which the Contractor is responsible, in such manner that the Employer and the Contractor are covered for the period stipulated in Clause 20 (1) hereof and are also covered during the Defects Liability Period for loss or damage arising from a cause occurring prior to the commencement of the Defects Liability Period and for any loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clause 47 hereof:

- a) The Works, together with the materials and Plant for incorporation therein, to their full replacement cost, plus an additional sum of ten (10) per cent of such replacement cost, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature;
- b) The Contractor's equipment and other things brought on to the Site by the Contractor to the replacement value of such equipment and other things;
- c) An insurance to cover the liabilities and warranties of Section 52(4);

Such insurance shall be effected with an insurer and in terms approved by the Employer, which approval shall not be unreasonably withheld, and the Contractor shall, whenever required, produce to the Engineer the policy or policies of insurance and the receipts for payment of the current premiums.

22. DAMAGE TO PERSONS AND PROPERTY

The Contractor shall (except if and so far as the Contract provides otherwise) indemnify, hold and save harmless and defend at his own expense the Employer, its officers, agents, employees and servants from and against all suits, claims, demands, proceedings, and liability of any nature or kind, including costs and expenses, for injuries or damages to any person or any property whatsoever which may arise out of or in consequence of acts or omissions of the Contractor or its agents, employees, servants or subcontractors in the execution of the Contract. The provision of this Clause shall extend to suits, claims, demands, proceedings and liability

in the nature of workmen's compensation claims and arising out of the use of patented inventions and devices. Provided always that nothing herein contained shall be deemed to render the Contractor liable for or in respect of or with respect to:

- a) The permanent use or occupation of land by the Works or any part thereof;
- b) The right of the Employer to construct the Works or any part thereof on, over, under, or through any land.
- c) Interference whether temporary or permanent with any right of light, airway or water or other easement or quasi-easement which is the unavoidable result of the construction of the Works in accordance with the Contract.
- d) Death, injuries or damage to persons or property resulting from any act or neglect of the Employer, his agents, servants or other contractors, done or committed during the validity of the Contract.

23. LIABILITY INSURANCE

23.1. Obligation to take out Liability Insurance

Before commencing the execution of the Works, but without limiting his obligations and responsibility under Clause 20 hereof, the Contractor shall insure against his liability for any death, material or physical damage, loss or injury which may occur to any property, including that of the Employer or to any person, including any employee of the Employer by or arising out of the execution of the Works or in the carrying out of the Contract, other than due to the matters referred to in the proviso to Clause 22 hereof.

23.2. Minimum Amount of Liability Insurance

Such insurance shall be effected with an insurer and in terms approved by the Employer, which approval shall not be unreasonably withheld, and for at least the amount specified in the contract. The Contractor shall, whenever required by the Employer or the Engineer, produce to the Engineer the policy or policies of insurance and the receipts for payment of the current premiums.

23.3. Provision to Indemnify Employer

The insurance policy shall include a provision whereby, in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy, being brought or made against the Employer, the insurer shall indemnify the Employer against such claims and any costs, charges and expenses in respect thereof.

23.4. ACCIDENT OR INJURY TO WORKMEN

- a) The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any sub-Contractor, save and except an accident or injury resulting from any act or default of the Employer, his agents or servants. The Contractor shall indemnify, hold and save harmless the Employer against all such damages and compensation, save and except as aforesaid, and against all claims, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- b) Insurance Against Accident, etc., to Workmen
The Contractor shall insure against such liability with an insurer approved by the Employer, which approval shall not be unreasonably withheld, and shall continue such insurance during the whole of the time that any persons are employed by him for the Works and shall, when required, produce to the Engineer such policy of insurance and the receipt for payment of the current premium. Provided always that, in respect of any persons employed by any subcontractor, the Contractor's obligation to insure as aforesaid under this sub-clause shall be satisfied if the subcontractor shall have insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy but the Contractor shall require such subcontractor to produce to the Engineer when required such policy of insurance and the receipt for the current premium, and obtain the insertion of a provision to that effect in its contract with the subcontractor.

24. REMEDY ON CONTRACTOR'S FAILURE TO INSURE

If the Contractor shall fail to effect and keep in force any of the insurances referred to in Clauses 21, 23 and 24 hereof, or any other insurance which he may be required to effect under the terms of the Contract, the Employer may in any such case effect and keep in force any such insurance and pay such premium as may be necessary for that purpose and from time to time deduct the amount so paid by the Employer as aforesaid from any monies due or which may become due to the Contractor, or recover the same as a debt due from the Contractor.

25. COMPLIANCE WITH STATUTES, REGULATIONS, ETC.

- a) The Contractor shall give all notices and pay all fees and charges required to be given or paid by any national or State Statutes, Ordinances, Laws, Regulations or By-laws, or any local or other duly constituted authority in relation to the execution of the Works or of any Temporary Works and by the Rules and Regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works or any Temporary Works.
- b) The Contractor shall conform in all respects with any such Statutes, Ordinances, Laws, Regulations, By-laws or requirements of any such local or other authority which may be applicable to the Works and shall keep the Employer indemnified against all penalties and liabilities of every kind for breach of any such Statutes, Ordinances, Laws, Regulations, By-laws or requirements.

27. FOSSILS, ETC.

All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site of the Works shall as between the Employer and the Contractor be deemed to be the absolute property of the Employer and the Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and before removal acquaint the Employer of such discovery and carry out at the expense of the Employer the Engineer's orders as to the disposal of the same.

28. COPYRIGHT, PATENT AND OTHER PROPRIETARY RIGHTS, AND ROYALTIES

- a) The Contractor shall hold harmless and fully indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any Plant, equipment, machine, work or material used for or in connection with the Works or Temporary Works and from and against all claims, demands proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or Specification provided by the Engineer.
- b) Except where otherwise specified, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Works or Temporary Works.

29. INTERFERENCE WITH TRAFFIC AND ADJOINING PROPERTIES

All operations necessary for the execution of the Works and for the Construction of any Temporary Works shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with the public convenience, or the access to, use and occupation of, public or private roads and footpaths to or of properties whether in the possession of the Employer or of any other person. The Contractor shall hold harmless and indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters in so far as the Contractor is responsible therefore.

30. EXTRAORDINARY TRAFFIC AND SPECIAL LOADS

- a) The Contractor shall use every reasonable means to prevent any of the roads or bridges communicating with or on the routes to the Site from being damaged by any traffic of the Contractor or any of his sub-contractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of plant and material from and to the Site shall be limited as far as reasonably possible and so that no unnecessary damage may be occasioned to such roads and bridges.
- b) Should it be found necessary for the Contractor to move any load of Constructional Plant, machinery, reconstructed units or parts of units of work, or other thing, over part of a road or bridge, the moving whereof is likely to damage any such road or bridge unless special

protection or strengthening is carried out, then the Contractor shall before moving the load on to such road or bridge, save insofar as the Contract otherwise provide, be responsible for and shall pay for the cost of strengthening any such bridge or altering or improving any such road to avoid such damage, and the Contractor shall indemnify and keep the Employer indemnified against all claims for damage to any such road or bridge caused by such movement, including such claim as may be made directly against the Employer, and shall negotiate and pay all claims arising solely out of such damage.

31. OPPORTUNITIES FOR OTHER CONTRACTORS

The Contractor shall in accordance with the requirements of the Engineer afford all reasonable opportunities for carrying out their work to any other contractors employed by the Employer and their workmen and to the workmen of the Employer and of any other duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works. If work by other contractors of the Employer as above-mentioned involves the Contractor in any direct expenses as a result of using his Site facilities, the Employer shall consider payment to the Contractor of such sum or sums as may be recommended by the Engineer.

32. CONTRACTOR TO KEEP SITE CLEAN

During the progress of the Works, the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any Constructional Plant and surplus materials and clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.

33. CLEARANCE OF SITE ON SUBSTANTIAL COMPLETION

On the substantial completion of the Works, the Contractor shall clear away and remove from the Site all Constructional Plant surplus materials, rubbish and Temporary Works of every kind and leave the whole of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer.

34. LABOUR

34.1 Engagement of Labour

The Contractor shall make his own arrangements for the engagement of all labor local or otherwise.

35.1 Supply of Water

The Contractor shall provide on the Site to the satisfaction of the Engineer an adequate supply

of drinking and other water for the use of the Contractor's staff and work people.

36.1 Alcoholic Drinks or Drugs

The Contractor shall comply with Government laws and regulations and orders in force as regards the import, sale, barter or disposal of alcoholic drinks or narcotics and he shall not allow or facilitate such importation, sale, gift, barter or disposal by his sub-contractors, agents or employees.

37.1 Arms and Ammunition

The restrictions specified in clause 34.3 above shall include all kinds of arms and ammunition.

38.1 Holiday and Religious Customs

The Contractor shall in all dealings with labor in his employ have due regard to all holiday, recognized festivals and religious or other customs.

39.1 Epidemics

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

40.1 Disorderly Conduct, etc.

The Contractor shall at all times take all reasonable precautions to prevent any unlawful riotous or disorderly conduct by or amongst his employees and for the preservation of peace and the protection of persons and property in the neighborhood of the Works against the same.

41.1 Observance by Sub-Contractors

The Contractor shall be considered responsible for the observance of the above provisions by his Sub-Contractors.

42.1 Legislation applicable to Labor

The Contractor shall abide by all applicable legislation and regulation with regard to labor.

35. RETURNS OF LABOUR, PLANT, ETC.

The Contractor shall, if required by the Engineer, deliver to the Engineer at his office, a return in detail in the form and at such intervals as the Engineer may prescribe showing the supervisory staff and the numbers of the several classes of labor from time to time employed by the Contractor on the Site and such information respecting Constructional plant as the Engineer may require.

36. MATERIALS, WORKMANSHIP AND TESTING

36.1 Materials and Workmanship

- a) All materials and workmanship shall be of the respective kinds described in the Contract and in accordance with the Engineer's instructions and shall be subjected from time to time to such tests as the Engineer may direct at the place of manufacture or fabrication, or on the Site or at all or any of such places. The Contractor shall provide such assistance, instruments, machines, labor and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any materials used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the Engineer. All testing equipment and instruments provided by the Contractor shall be used only by the Engineer or by the Contractor in accordance with the instructions of the Engineer.
- b) No material not conforming with the Specifications in the Contract may be used for the Works without prior written approval of the Employer and instruction of the Engineer, provided always that if the use of such material results or may result in increasing the Contract Price, the procedure in Clause 48 shall apply.

36.2 Cost of Samples

All samples shall be supplied by the Contractor at his own cost unless the supply thereof is clearly intended in the Specifications or Bill of Quantities to be at the cost of the Employer. Payment will not be made for samples which do not comply with the Specifications.

36.3 Cost of Tests

The Contractor shall bear the costs of any of the following tests:

- a) Those clearly intended by or provided for in the Contract Documents.
- b) Those involving load testing or tests to ensure that the design of the whole of the Works or any part of the Works is appropriate for the purpose which it was intended to fulfil.

37 ACCESS TO SITE

The Employer and the Engineer and any persons authorized by either of them shall, at all times, have access to the Works and to the Site and to all workshops and places where work is being prepared or whence materials, manufactured articles or machinery are being obtained for the

Works and the Contractor shall afford every facility for and every assistance in or in obtaining the right to such access.

38 EXAMINATION OF WORK BEFORE COVERING UP

No work shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon. The Contractor shall give due notice to the Engineer whenever any such work or foundations is or are ready or about to be ready for examination and the Engineer shall without unreasonable delay unless he considers it unnecessary and advises the Contractor accordingly attend for the purpose of examining and measuring such work or of examining such foundations.

39 REMOVAL OF IMPROPER WORK AND MATERIALS

39.1 Engineer's power to order removal

The Engineer shall during the progress of the Works have power to order in writing from time to time, and the Contractor shall execute at his cost and expense, the following operations:

- a) The removal from the Site within such time or times as may be specified in the order of any materials which in the opinion of the Engineer are not in accordance with the Contract;
- b) The substitution of proper and suitable materials; and
- c) The removal and proper re-execution (notwithstanding any previous test thereof or interim payment therefore) of any work which in respect of materials or workmanship is not in the opinion of the Engineer in accordance with the Contract.

39.2 Default of Contractor in carrying out Engineer's Instructions

In case of default on the part of the Contractor in carrying out an instruction of the Engineer, the Employer shall be entitled to employ and pay other persons to carry out the same and all expenses consequent thereon or incidental thereto shall be borne by the Contractor and shall be recoverable from him by the Employer and may be deducted by the Employer from any monies due or which may become due to the Contractor.

40 SUSPENSION OF WORK

The Contractor shall on the written order of the Engineer suspend the progress of the Works or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall, during such suspension, properly protect and secure the Works so far as it is necessary in the opinion of the Engineer. The Employer should be notified and his written approval should be sought for any suspension of work in excess of three (3) days.

41 POSSESSION OF SITE

41.1 Access to Site

The Employer shall with the Engineer's written order to commence the Works, give to the Contractor possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the construction of the Works in accordance with the Program referred to in Clause 13 hereof and otherwise in accordance with such reasonable proposals of the Contractor as he shall make to the Engineer by notice in writing, and shall from time to time as the Works proceed give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the construction of the Works with due dispatch in accordance with the said Program or proposals, as the case may be.

41.2 Way leaves, etc.

The Contractor shall bear all expenses and charges for special temporary way leaves required by him in connection with access to the Site. The Contractor shall also provide at his own cost any additional accommodation outside the Site required by him for the purpose of the Works.

41.3 Limits of the Site

Except as defined below, the limits of the Site shall be as defined in the Contract. Should the Contractor require land beyond the Site, he shall provide it entirely at his own expense and before taking possession shall supply the Engineer with a copy of the necessary permits. Access to the Site is available where the Site adjoins a public road but it is not provided unless shown on the Drawings. When necessary for the safety and convenience of workmen, public or livestock or for the protection of the Works, the Contractor shall, at his own expense, provide adequate temporary fencing to the whole or part of the Site. The Contractor shall not disturb damage or pull down any hedge, tree or building within the Site without the written consent of the Engineer.

42 TIME FOR COMPLETION

- a) Subject to any requirement in the Contract as to completion of any section of the Works before completion of the whole, the whole of the Works shall be completed, in accordance with the provisions of Clause 46 and 47 hereof, within the time stated in the Contract.
- b) The completion time includes weekly rest days, official holidays, and days of inclement weather.

43 EXTENSION OF TIME FOR COMPLETION

If, subject to the provisions of the Contract, the Engineer orders alterations or additions in the

Works in accordance with Clause 48 hereof, or if circumstances constituting force majeure as defined in the Contract have occurred, the Contractor shall be entitled to apply for an extension of the time for completion of the Works specified in the Contract. The Employer shall, upon such application, determine the period of any such extension of time; provided that in the case of alterations or additions in the Works, the application for such an extension must be made before the alterations or additions in the Works are undertaken by the Contractor.

44 RATE OF PROGRESS

The whole of the materials, plant and labor to be provided by the Contractor and the mode, manner and speed of execution and completion of the Works are to be of a kind and conducted in a manner to the satisfaction of the Engineer. Should the rate of progress of the Works or any part thereof be at any time in the opinion of the

Engineer too slow to ensure the completion of the Works by the prescribed time or extended time for completion, the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as the Contractor may think necessary and the Engineer may approve to expedite progress so as to complete the Works by the prescribed time or extended time for completion. If the work is not being carried on by day and by night and the Contractor shall request permission to work by night as well as by day, then, if the Engineer shall grant such permission, the Contractor shall not be entitled to any additional payment. All work at night shall be carried out without unreasonable noise and disturbance. The contractor shall indemnify the Employer from and against any claims or liability for damages on account of noise or other disturbance created while or in carrying out the work and from and against all claims, demands, proceedings, costs and expenses whatsoever in regard or in relation to such noise or other disturbance. The Contractor shall submit in triplicate to the Engineer at the end of each month signed copies of explanatory Drawings or any other material showing the progress of the Works.

45 LIQUIDATED DAMAGES FOR DELAY

- a) If the Contractor shall fail to complete the Works within the time for completion prescribed in the Contract, or any extended time for completion in accordance with the Contract, then the Contractor shall pay to the Employer the sum specified in the Contract as liquidated damages, for the delay between the time prescribed in the Contract or the extended time for completion, as the case may be, and the date of substantial completion of the Works as stated in the Certificate of Substantial Completion, subject to the applicable limit stated in the Contract. The said sum shall be payable by the sole fact of the delay without the need for any previous notice or any legal proceedings, or proof of damage, which shall in all cases be considered as ascertained. The Employer may, without prejudice to any other method of recovery, deduct the amount of such liquidated damages from any monies in its hands due or which may become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works or from any other of his obligations and liabilities under the Contract.

- b) If, before the time for completion of the whole of the Works or of a Section of the Works, a Certificate of Substantial Completion has been issued for any part or Section of the Works, the liquidated damages for delay in completion of the remainder of the Works or of that Section may, for any period of delay after the date stated in such Certificate of Substantial Completion, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part or Section so certified bears to the total value of the whole of the Works or Section, as applicable. The provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

46 CERTIFICATE OF SUBSTANTIAL COMPLETION

46.1 Substantial Completion of the Works

When the whole of the Works have been substantially completed and have satisfactorily passed any test on completion prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer accompanied by an undertaking to finish any outstanding work during the Defects Liability Period. Such notice and undertaking shall be in writing and shall be deemed to be a request by the Contractor, for the Engineer to issue a Certificate of Substantial Completion in respect of the Works. The Engineer shall, within twenty-one (21) days of the date of delivery of such notice either issue to the Contractor, with a copy to the Employer, a Certificate of Substantial Completion stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract or give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, requires to be done by the Contractor before the issuance of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the work specified therein. The Contractor shall be entitled to receive such Certificate of Substantial Completion within twenty-one (21) days of completion, to the satisfaction of the Engineer, of the work so specified and making good any defect so notified. Upon issuance of the Certificate of Substantial Completion of the Works, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work during the Defects Liability Period.

46.2 Substantial Completion of Sections or Parts of the Works

In accordance with the procedure in Sub-Clause (1) of this Clause and on the same conditions as provided therein, the Contractor may request the Engineer to issue, and the Engineer may issue, a Certificate of Substantial Completion in respect of any Section or part of the Works which has been substantially completed and has satisfactorily passed any tests on completion prescribed by the Contract, if:

- a) a separate time for completion is provided in the Contract in respect of such Section or part of the Works;
- b) such Section or part of the Works has been completed to the satisfaction of the Engineer and is required by the Employer for his occupation or use.

Upon the issuance of such Certificate, the Contractor shall be deemed to have undertaken to complete any outstanding work during the Defects Liability Period.

47 DEFECTS LIABILITY

47.1 Defects Liability Period

The expression "Defects Liability Period" shall mean the period of **twelve (12) months**, calculated from the date of completion of the Works stated in the Certificate of Substantial Completion issued by the Engineer or, in respect of any Section or part of the Works for which a separate Certificate of Substantial Completion has been issued, from the date of completion of that Section or part as stated in the relevant Certificate. The expression "the Works" shall, in respect of the Defects Liability Period, be construed accordingly.

47.2 Completion of Outstanding Work and Remedying of Defects

During the Defects Liability Period, the Contractor shall finish the work, if any, outstanding at the date of the Certificate of Substantial Completion, and shall execute all such work of repair, amendment, reconstruction, rectification and making good defects, imperfections, shrinkages or other faults as may be required of the Contractor in writing by the Engineer during the Defects Liability Period and within fourteen (14) days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to expiration of the Defects Liability Period.

47.3 Cost of Execution of Work of Repair, etc.

All such outstanding work shall be carried out by the Contractor at his own expense if the necessity thereof shall, in the opinion of the Engineer, be due to the use of material or workmanship not in accordance with the Contract, or to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied, on the Contractor's part under the Contract.

47.4 Remedy on Contractor's Failure to Carry Out Work Required

If the Contractor shall fail to do any such work outstanding on the Works, the Employer shall be entitled to employ and pay other persons to carry out the same, and all expenses consequent thereon or incidental thereto shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or which may become due to the Contractor.

47.5 Certificate of Final Completion

Upon satisfactory completion of the work outstanding on the Works, the Engineer shall within twenty eight (28) days of the expiration of the Defects Liability period issue a Certificate of Final Completion to the Contractor. The Contract shall be deemed to be completed upon

issuance of such Certificate, provided that the provisions of the Contract which remain unperformed and the Settlement of Disputes provision in the Contract shall remain in force for as long as is necessary to dispose of any outstanding matters or issues between the Parties.

48 ALTERATIONS, ADDITIONS AND OMISSIONS

48.1 Variations

The Engineer may within his powers introduce any variations to the form, type or quality of the Works or any part thereof which he considers necessary and for that purpose or if for any other reasons it shall, in his opinion be desirable, he shall have power to order the Contractor to do and the Contractor shall do any of the following:

- (a) increase or decrease the quantity of any work under the Contract;
- (b) omit any such work;
- (c) change the character or quality or kind of any such work;
- (d) change the levels, lines, positions and dimensions of any part of the Works;
- (e) execute additional work of any kind necessary for the completion of the Works, and no such variation shall in any way vitiate or invalidate the Contract.

48.2 Variations Increasing Cost of Contract or altering the Works.

The Engineer shall, however, obtain the written approval of the Employer before giving any order for any variations which may result in an increase of the Contract Price or in an essential alteration of the quantity, quality or character of the Works.

48.3 Orders for Variations to be in Writing

No variations shall be made by the Contractor without an order in writing from the Engineer. Variations requiring the written approval of the Employer under paragraph (2) of this Clause shall be made by the Contractor only upon written order from the Engineer accompanied by a copy of the Employer's approval. Provided that, subject to the provisions of the Contract, no order in writing shall be required for any increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this Clause but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities.

48.4 Valuation of Variations

The Engineer shall estimate to the Employer the amount to be added or deducted from the Contract Price in respect of any variation, addition or omission. In the case of any variation, addition or omission which may result in an increase of the Contract Price, the Engineer shall

communicate such estimate to the Employer together with his request for the Employer's written approval of such variation, addition or omission. The value of any variation, addition or omission shall be calculated on the basis of the unit prices contained in the Bill of Quantities.

49 PLANT, TEMPORARY WORKS AND MATERIALS

49.1 Plant, etc., Exclusive Use for the Works

All Constructional Plant, Temporary Works and Materials provided by the Contractor shall, when brought on the Site, be deemed to be exclusively intended for the construction and completion of the Works and the Contractor shall not remove the same or any part thereof (save for the purpose of moving it from one part of the Site to another) without the consent in writing of the Engineer which shall not be unreasonably withheld.

49.2 Removal of Plant, etc.

Upon completion of the Works the Contractor shall remove from the Site all the said Constructional Plant and Temporary Works remaining thereon and any unused materials provided by the Contractor.

49.3 Employer not liable for Damage to Plant

The Employer shall not be at any time liable for the loss of any of the said Constructional plant, Temporary Works or Materials save if such loss results from the act or neglect of the Employer, its employees or agents.

49.4 Ownership of paid material and work

All material and work covered by payments made by the Employer to the Contractor shall thereupon become the sole property of the Employer, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work or as waiving the right of the Employer to require the fulfillment of all of the terms of the Contract.

49.5 Equipment and supplies furnished by Employer

Title to any equipment and supplies which may be furnished by the Employer shall rest with the Employer and any such equipment and supplies shall be returned to the Employer at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment when returned to the Employer shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear.

50 APPROVAL OF MATERIALS ETC., NOT IMPLIED

The operation of Clause 49 hereof shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

51 MEASUREMENT OF WORKS

The Engineer shall, when he requires any part or parts of the Works to be measured, give notice to the Contractor or the Contractor's authorized agent or representative who shall forthwith attend or send a qualified agent to assist the Engineer in making such measurement and shall furnish all particulars required by either of them. Should the Contractor not attend or neglect or omit to send such agent, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work. The purpose of measuring is to ascertain the volume of work executed by the Contractor and therefore determine the amount of the monthly payments.

52 LIABILITY OF THE PARTIES

- 1** The Works shall not be considered as completed until a Certificate of Final Completion shall have been signed by the Engineer and delivered to the Employer stating that the Works have been completed and that the Contractor has fulfilled all his obligations under Clause 47 to his satisfaction.
- 2** The Employer shall not be liable to the Contractor for any matter arising out of or in connection with the Contract or the execution of the Works unless the Contractor shall have made a claim in writing in respect thereof before the giving of the Certificate of Final Completion and in accordance with the Contract.

3 Unfulfilled Obligations

Notwithstanding the issue of the Certificate of Final Completion, the Contractor shall remain liable for the fulfillment of any obligation incurred under the provisions of the Contract prior to the issuance of the Certificate of Final Completion and which remains unperformed at the time such Certificate is issued. For the purpose of determining the nature and extent of any such obligation the Contract shall be deemed to remain in force between the parties hereto.

4 Contractor Responsible

Notwithstanding any other provisions in the Contract documents, the Contractor shall be totally responsible for and shall bear any and all risks of loss or damage to or failure of the Works or any part thereof for a period of ten years after issuance of the Certificate of Final Completion, provided always that such risks, damage or failure result from acts, defaults and negligence of the Contractor, his agents, employees or workmen and such contractors.

53 AUTHORITIES

- 1 The Employer shall have the right to enter upon the Site and expel the Contractor therefrom without thereby voiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Employer and the Engineer by the Contract in any of the following cases:
 - (a) If the Contractor is declared bankrupt or claims bankruptcy or court protection against his creditors or if the Contractor is a company or member of a company which was dissolved by legal action;
 - (b) If the Contractor makes arrangements with his creditors or agrees to carry out the Contract under an inspection committee of his creditors;
 - (c) If the Contractor withdraws from the Works or assigns the Contract to others in whole or in part without the Employer's prior written approval;
 - (d) If the Contractor fails to commence the Works or shows insufficient progress to the extent which in the opinion of the Engineer will not enable him to meet the target completion date of the Works;
 - (e) If the Contractor suspends the progress of the Works without due cause for fifteen (15) days after receiving from the Engineer written notice to proceed;
 - (f) If the Contractor fails to comply with any of the Contract conditions or fails to fulfill his obligations and does not remedy the cause of his failure within fifteen (15) days after being notified to do so in writing;
 - (g) If the Contractor is not executing the work in accordance with standards of workmanship specified in the Contract;
 - (h) If the Contractor gives or promises to give a present or loan or reward to any employee of the Employer or of the Engineer.

Then the Employer may himself complete the Works or may employ any other contractor to complete the Works and the Employer or such other contractor may use for such completion so much of Constructional Plant, Temporary Works and Materials, which have been deemed to be reserved exclusively for the construction and completion of the Works under the provision of the Contract as he or they may think proper and the Employer may at any time sell any of the said Constructional Plant, Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

2 Evaluation after Re-entry

The Engineer shall as soon as may be practicable after any such entry and expulsion by the Employer notify the Contractor to attend the necessary evaluation of the Works. In the event that for any reason the Contractor does not attend such evaluation the Engineer shall undertake

the said evaluation in the absence of the Contractor and shall issue a certificate stating the sum, if any, due to the Contractor for work done in accordance with the Contract up to the time of entry and expulsion by the Employer which has been reasonably accumulated to the Contractor in respect of the Works he has executed in such case in accordance with the Contract. The Engineer shall indicate the value of the materials whether unused or partially used and the value of construction equipment and any part of the Temporary Works.

3 Payment after Re-entry

If the Employer shall enter and expel the Contractor under this Clause he shall not be liable to pay the Contractor any money on account of the Contract until the expiration of the Defects Liability Period, and thereafter until the costs of completion and making good any defects of the Works, damages for delay in completion (if any), and all other expenses incurred by the Employer have been ascertained and their amount certified by the Engineer. The Contractor shall then be entitled to receive only such sum or sums (if any) as the Engineer may certify would have been due to him upon due completion by him after deducting the said amount. But if such amount shall exceed the sum which would have been payable to the Contractor on due completion by him,, then the Contractor shall upon demand pay to the Employer the amount of such excess. The Employer in such case may recover this amount from any money due to the Contractor from the Employer without the need to resort to legal procedures.

54 URGENT REPAIRS

If by reason of any accident or failure or other event occurring to, in or in connection with the Works or any part thereof either during the execution of the Works or during the Defects Liability Period any remedial or other work or repair shall in the opinion of the Engineer be urgently necessary for security and the Contractor is unable or unwilling at once to do such work or repair, the Employer may by his own or other workmen do such work or repair as the Engineer may consider necessary. If the work or repair so done by the Employer is work which in the opinion of the Engineer the Contractor was liable to do at his own expense under the Contract, all costs and charges properly incurred by the Employer in so doing shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor provided always that the Engineer shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

55 INCREASE AND DECREASE OF COSTS

Except if otherwise provided by the Contract, no adjustment of the Contract Price shall be made in respect of fluctuations of market, prices of labour, materials, plant or equipment, neither due to fluctuation in interest rates nor devaluation or any other matters affecting the Works.

56 TAXATION

The Contractor shall be responsible for the payment of all charges and taxes in respect of income including value added tax, all in accordance with and subject to the provisions of the income tax laws and regulations in force and all amendments thereto. It is the Contractor's responsibility to make all the necessary inquiries in this respect and he shall be deemed to have satisfied himself regarding the application of all relevant tax laws.

57 BLASTING

The Contractor shall not use any explosives without the written permission of the Engineer who shall require that the Contractor has complied in full with the regulations in force regarding the use of explosives. However, the Contractor, before applying to obtain these explosives, has to provide well arranged storage facilities. The Engineer's approval or refusal to permit the use of explosives shall not constitute ground for claims by the Contractor.

58 MACHINERY

The Contractor shall be responsible for coordinating the manufacture, delivery, erection and commissioning of plant machinery and equipment which are to form a part of the Works. He shall place all necessary orders as soon as possible after the signing of the Contract. These orders and their acceptance shall be produced to the Engineer on request. The Contractor shall also be responsible for ensuring that all sub-contractors adhere to such programs as are agreed and are needed to ensure completion of the Works within the period for completion. Should any sub-contracted works be delayed, the Contractor shall initiate the necessary action to speed up such completion. This shall not prejudice the Employer's right to exercise his remedies for delay in accordance with the Contract.

59 TEMPORARY WORKS AND REINSTATEMENT

The Contractor shall provide and maintain all temporary roads and tracks necessary for movement of plant and materials and clear same away at completion and make good all works damaged or disturbed. The Contractor shall submit drawings and full particulars of all Temporary Works to the Engineer before commencing same. The Engineer may require modifications to be made if he considers them to be insufficient and the Contractor shall give effect to such modifications but shall not be relieved of his responsibilities. The Contractor shall provide and maintain weather-proof sheds for storage of material pertinent to the Works both for his own use and for the use of the Employer and clear same away at the completion of the Works. The Contractor shall divert as required, at his own cost and subject to the approval of the Engineer, all public utilities encountered during the progress of the Works, except those specially indicated on the drawings as being included in the Contract. Where diversions of services are not required in connection with the Works, the Contractor shall uphold, maintain and keep the same in working order in existing locations. The Contractor shall make good, at his own expense, all damage to telephone, telegraph and electric cable or wires, sewers, water or other pipes and other services, except where the Public Authority or Private Party owning or responsible for the same elects to make good the damage. The costs incurred in so doing shall be paid by the Contractor to the Public Authority or Private Party on

demand.

60 PHOTOGRAPHS AND ADVERTISING

The Contractor shall not publish any photographs of the Works or allow the Works to be used in any form of advertising whatsoever without the prior approval in writing from the Employer.

61 PREVENTION OF CORRUPTION

The Employer shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation, if the Contractor has offered or given any person any gift or consideration of any kind as an inducement or reward for doing or intending to do any action in relation to the obtaining or the execution of the Contract or any other contract with the Employer or for showing or intending to show favour or disfavour to any person in relation to the Contract or any other contract with the Employer, if the like acts shall have been done by any persons employed by him or acting on his behalf whether with or without the knowledge of the Contractor in relation to this or any other Contract with the Employer.

62 DATE FALLING ON HOLIDAY

Where under the terms of the Contract any act is to be done or any period is to expire upon a certain day and that day or that period fall on a day of rest or recognized holiday, the Contract shall have effect as if the act were to be done or the period to expire upon the working day following such day.

63 NOTICES

- 1** Unless otherwise expressly specified, any notice, consent, approval, certificate or determination by any person for which provision is made in the Contract Documents shall be in writing. Any such notice, consent, approval, certificate or determination to be given or made by the Employer, the Contractor or the Engineer shall not be unreasonably withheld or delayed.
- 2** Any notice, certificate or instruction to be given to the Contractor by the Engineer or the Employer under the terms of the Contract shall be sent by post, cable, telex or facsimile at the Contractor's principal place of business specified in the Contract or such other address as the Contractor shall nominate in writing for that purpose, or by delivering the same at the said address against an authorized signature certifying the receipt.
- 3** Any notice to be given to the Employer under the terms of the Contract shall be sent by post, cable, telex or facsimile at the Employer's address specified in the Contract, or by delivering the same at the said address against an authorized signature certifying the receipt.

- 4 Any notice to be given to the Engineer under the terms of this Contract shall be sent by post, cable, telex or facsimile at the Engineer's address specified in the Contract, or by delivering the same at the said address against an authorized signature certifying the receipt.

64 LANGUAGE, WEIGHTS AND MEASURES

Except as may be otherwise specified in the Contract, English shall be used by the Contractor in all written communications to the Employer or the Engineer with respect to the services to be rendered and with respect to all documents procured or prepared by the Contractor pertaining to the Works. The metric system of weights and measures shall be used in all instances.

65 RECORDS, ACCOUNTS, INFORMATION AND AUDIT

The Contractor shall maintain accurate and systematic records and accounts in respect of the work performed under this Contract.

The Contractor shall furnish, compile or make available at all times to UNDP any records or information, oral or written, which UNDP may reasonably request in respect of the Works or the Contractor's performance thereof.

The Contractor shall allow UNDP or its authorized agents to inspect and audit such records or information upon reasonable notice.

66 FORCE MAJEURE

Force majeure as used herein means Acts of God, war (whether declared or not), invasion, revolution, insurrection or other acts or events of a similar nature or force.

In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to UNDP and to the Engineer of such force majeure if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. Subject to acceptance by UNDP of the existence of such force majeure, which acceptance shall not be unreasonably withheld, the following provisions shall apply:

- (a) The obligations and responsibilities of the Contractor under this Contract shall be suspended to the extent of his inability to perform them and for as long as such inability continues. During such suspension and in respect of work suspended, the Contractor shall be reimbursed by UNDP substantiated costs of maintenance of the Contractor's equipment and of per diem of the Contractor's permanent personnel rendered idle by such suspension;
- (b) The Contractor shall within fifteen (15) days of the notice to UNDP of the occurrence of the force majeure submit a statement to UNDP of estimated costs referred to in sub-paragraph (a) above during the period of suspension followed by a complete statement of actual expenditures within thirty (30) days after the end of the suspension;

- (c) The term of this Contract shall be extended for a period equal to the period of suspension taking however into account any special condition which may cause the additional time for completion of the Works to be different from the period of suspension;
- (d) If the Contractor is rendered permanently unable, wholly or in part, by reason of force majeure, to perform his obligations and meet his responsibilities under the Contract, UNDP shall have the right to terminate the Contract on the same terms and conditions as provided for in Clause 68 of these General Conditions, except that the period of notice shall be seven (7) days instead of fourteen (14) days, and
- (e) For the purpose of the preceding sub-paragraph, UNDP may consider the Contractor permanently unable to perform in case of any suspension period of more than ninety (90) days.

67 SUSPENSION BY UNDP

UNDP may by written notice to the Contractor suspend for a specified period, in whole or in part, payments to the Contractor and/or the Contractor's obligation to continue to perform the Works under this Contract, if in UNDP' sole discretion:

- (a) any conditions arise which interfere, or threaten to interfere with the successful execution of the Works or the accomplishment of the purpose thereof, or
- (b) the Contractor shall have failed, in whole or in part, to perform any of the terms and conditions of this Contract.

After suspension under sub-paragraph (a) above, the Contractor shall be entitled to reimbursement by UNDP of such costs as shall have been duly incurred in accordance with this Contract prior to the commencement of the period of such suspension.

The term of this Contract may be extended by UNDP for a period equal to any period of suspension, taking into account any special conditions which may cause the additional time for completion of the Works to be different from the period of suspension.

68 TERMINATION BY UNDP

UNDP may, notwithstanding any suspension under Clause 67 above, terminate this Contract for cause or convenience in the interest of UNDP upon not less than fourteen (14) days written notice to the Contractor.

Upon termination of this Contract:

- (a) The Contractor shall take immediate steps to terminate his performance of the Contract in a prompt and orderly manner and to reduce losses and to keep further expenditures to a minimum, and

- (b) The Contractor shall be entitled (unless such termination has been occasioned by the Contractor's breach of this Contract), to be paid for the part of the Works satisfactorily completed and for the materials and equipment properly delivered to the Site as of the date of termination for incorporation to the Works, plus substantiated costs resulting from commitments entered into prior to the date of termination as well as any reasonable substantiated direct costs incurred by the Contractor as a result of the termination, but shall not be entitled to receive any other or further payment or damages.

69 TERMINATION BY THE CONTRACTOR

In the case of any alleged breach by UNDP of the Contract or in any other situation which the Contractor reasonably considers to entitle him to terminate his performance of the Contract, the Contractor shall promptly give written notice to UNDP detailing the nature and the circumstances of the breach or other situation. Upon acknowledgement in writing by UNDP of the existence of such breach and UNDP' inability to remedy it, or upon failure of UNDP to respond to such notice within twenty (20) days of receipt thereof, the Contractor shall be entitled to terminate this Contract by giving 30 days written notice thereof. In the event of disagreement between the Parties as to the existence of such breach or other situation referred to above, the matter shall be resolved in accordance with Clause 71 of these General Conditions.

Upon termination of this Contract under this Clause the provisions of sub-paragraph (b) of Clause 68 hereof shall apply.

70 RIGHTS AND REMEDIES OF UNDP

Nothing in or relating to this Contract shall be deemed to prejudice or constitute a waiver of any other rights or remedies of UNDP.

UNDP shall not be liable for any consequences of, or claim based upon, any act or omission on the part of the Government.

71 SETTLEMENT OF DISPUTES

In the case of any claim, controversy or dispute arising out of, or in connection with this Contract or any breach thereof, the following procedure for resolution of such claim, controversy or dispute shall apply.

71.1 Notification

The aggrieved party shall immediately notify the other party in writing of the nature of the alleged claim, controversy or dispute, not later than seven (7) days from awareness of the existence thereof.

71.2 Consultation

On receipt of the notification provided above, the representatives of the Parties shall start consultations with a view to reaching an amicable resolution of the claim, controversy or dispute without causing interruption of the Works.

71.3 Conciliation

Where the representatives of the Parties are unable to reach such an amicable settlement, either party may request the submission of the matter to conciliation in accordance with the UNCITRAL Rules of Conciliation then obtaining.

71.4 Arbitration

Any claim, controversy or dispute which is not settled as provided under clauses 71.1 through 3 above shall be referred to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The Parties shall be bound by the arbitration award rendered in accordance with such arbitration as the final adjudication of any such controversy or claim.

72 PRIVILEGES AND IMMUNITIES

Nothing in or relating to this Contract shall be deemed a waiver of any of the privileges and immunities of the United Nations of which UNDP is an integral part.