

INVITATION TO BID (ITB)

Construction of infrastructure projects in Wau County, Western Bahr El Ghazal State, South Sudan under ECRP II Project.

ITB Reference No: **4200753560 Wau TP28**

Country: **South Sudan**

Date: **16 September 2024**

SECTION 1: LETTER OF INVITATION

International Organization for Migration, hereinafter referred to as IOM, hereby invites prospective bidders to submit a bid in accordance with the General Conditions of Contract and the Schedule of Requirements as set out in this Invitation to Bid (ITB).

To enable you to submit a bid, please read the following attached documents carefully.

Section 1: This Letter of Invitation

Section 2: Instructions to Bidders

Section 3: Data Sheet

Section 4: Evaluation Criteria

Section 5: Schedule of Requirements

Annex 1: Terms of Reference (TOR) and relevant annexes (Annex 1A to 1G) – **enclosed separately**

Annex 1A. Design Drawings

Annex 1B. Bill of Quantities

Annex 1C. Guideline for Standards on Workmanship and Materials

Annex 1D. ECRP IOM Project Health and Safety Management Plan (HSMP)

Annex 1E. ECRP IOM Quality Management Plan (QMP)

Annex 1F. ECRP Environmental and Social Management Plan (C-ESMP)

Annex 1G. ECRP Labour Management Procedure (extract from ESMP)

Section 6: Conditions of Contract and Contract Forms

Section 7: Bidding Forms – **enclosed separately**

- Form A: Bid Confirmation
- Form B: Checklist
- Form C: Bid Submission
- Form D: Bidder Information
- Form E: Joint Venture/Consortium/Association Information
- Form F: Eligibility and Qualification
- Form G: Technical Bid
- Form H: Price Schedule
- Form I: Bid Security
- Form J: Key Supervisory Staff Schedule
- Form K: Construction Schedule
- Form L: Construction Equipment and Machinery Schedule

If you are interested in submitting a bid in response to this ITB, please prepare your bid in accordance with the requirements and procedure as set out in this ITB and submit it by the deadline for submission of bids set out in Section 3: Data Sheet.

Please acknowledge receipt of this ITB by completing and returning the attached Form A: Bid Confirmation by email to issjp@iom.int no later than 25 September 2024, indicating whether you intend to submit a bid or not. Should you require further clarifications, kindly communicate with the contact person/s identified in Section 3: Data Sheet as the focal point for queries on this ITB.

We look forward to receiving your bid.

Approved by:

Name: WARDERE Tahlil, Head of Supply Chian Unit

Date: 16 September 2024

SECTION 2: INSTRUCTIONS TO BIDDERS

GENERAL	
1. Scope	<p>Bidders are invited to submit a bid for the works specified in Section 5: Schedule of Requirements, in accordance with this Invitation to Bid (ITB). A summary of the scope of the bid is included in Section 3: Data Sheet.</p> <p>Bidders shall adhere to all the requirements of this ITB, including any amendment made in writing by IOM. This ITB is conducted in accordance with Policies and Procedures of IOM.</p>
2. Interpretation of the ITB	<p>Any bid submitted will be regarded as an offer by the bidder and does not constitute or imply the acceptance of the bid by IOM. IOM is under no obligation to award a contract to any bidder as a result of this ITB.</p>
3. Supplier Code of Conduct	<p>All prospective suppliers must read the UN Supplier Code of Conduct and acknowledge that it provides the minimum standards expected of suppliers to the UN. The Code of Conduct, which includes principles on labour, human rights, environment and ethical conduct may be found at: Supplier Code of Conduct (ungm.org).</p>
4. Eligible bidders	<p>Bidders shall have the legal capacity to enter into a binding contract with IOM.</p> <p>A bidder, and all parties constituting the bidder, may have the nationality of any country with the exception of the nationalities, if any, listed in Section 3: Data Sheet. A bidder shall be deemed to have the nationality of a country if the bidder is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country.</p> <p>All bidders found to have a conflict of interest shall be disqualified. Bidders may be considered to have a conflict of interest if they are or have been associated in the past, with a firm or any of its affiliates that have been engaged by IOM to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods, services or works required in the present procurement process.</p> <p>Bidders shall not be eligible to submit a bid if at the time of bid submission:</p> <ul style="list-style-type: none"> ● is included in the Ineligibility List, hosted by UNGM, that aggregates information disclosed by Agencies, Funds or Programs of the UN System; ● is included in the Consolidated United Nations Security Council Sanctions List, including the UN Security Council Resolution 1267/1989 list; ● is included in the World Bank Corporate Procurement Listing of Non-Responsible Vendors and World Bank Listing of Ineligible Firms and Individuals; ● Other sanctions lists, if applicable, as per the discretion of the IOM.
5. Eligible goods, works and services	<p>All goods, works and/or services to be supplied under the contract shall have their origin in any country apart from the countries, if any, listed in Section 3: Data Sheet, and all expenditures made under the contract will be limited to such goods, works and services. For purposes of this clause, “origin” means the place where the goods are mined, grown, or produced or the place from which the related services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognized product result that is substantially different in basic characteristics or in purpose or utility from its components.</p> <p>The origin of goods, works and services is distinct from the nationality of the bidder.</p>
6. Proprietary information	<p>The ITB documents and any specifications, plans, drawings, patterns, samples or information issued or furnished by IOM are issued solely for the purpose of enabling a bid to be completed and may not be used for any other purpose. The ITB documents and any additional information provided to bidders shall remain the property of IOM. All documents which may form part of the bid will become the property of IOM, who will not be required to return them to your firm.</p>
7. Publicity	<p>During the ITB process, a bidder is not permitted to create any publicity in connection with the ITB.</p>
SOLICITATION DOCUMENTS	
8. Clarification of solicitation documents	<p>Bidders may request clarifications on any of the ITB documents no later than the date indicated in Section 3: Data Sheet. Any request for clarification must be sent in writing in the manner indicated in Section 3: Data Sheet. Explanations or interpretations</p>

	<p>provided by personnel other than the named contact person will not be considered binding or official.</p> <p>IOM will provide the responses to clarifications through the method specified in Section 3: Data Sheet.</p> <p>IOM shall endeavour to provide responses to clarifications in an expeditious manner, but any delay in such response shall not cause an obligation on the part of IOM to extend the submission date of the bids, unless IOM deems that such an extension is justified and necessary.</p>
9. Amendment of solicitation documents	<p>At any time prior to the deadline of bid submission, IOM may for any reason, such as in response to a clarification requested by a bidder, modify the ITB in the form of an amendment to the ITB. Amendments will be made available to all prospective bidders.</p> <p>If the amendment is substantial, IOM may extend the deadline for submission of the bid to give the bidders reasonable time to incorporate the amendment into their bids.</p>
PREPARATION OF BIDS	
10. Cost of preparation of bid	<p>The bidder shall bear all costs related to the preparation and/or submission of the bid, regardless of whether its bid is selected or not. IOM shall not be responsible or liable for those costs, regardless of the conduct or outcome of the procurement process.</p>
11. Language	<p>The bid, as well as any and all related correspondence exchanged by the bidder and IOM, shall be written in the language(s) specified in Section 3: Data Sheet.</p>
12. Documents comprising the bid	<p>The bid shall comprise the following documents and related forms which details are provided in Section 3: Data Sheet:</p> <ol style="list-style-type: none"> Documents establishing the eligibility and qualifications of the bidder Technical bid Price Schedule Bid Security (if required)
13. Documents establishing eligibility and qualifications of the bidder	<p>The bidder shall furnish documentary evidence of its status as an eligible and qualified vendor, using the Forms provided in Section 7 and providing the documents required in those forms. In order to award a contract to a bidder, its qualifications must be documented to IOM's satisfaction.</p>
14. Technical bid	<p>The bidder is required to submit a technical bid using the form provided in Section 7 and taking into consideration the requirements in the ITB.</p>
15. Price Schedule	<p>The Price Schedule shall be prepared using the form provided in Section 7 and taking into consideration the requirements in the ITB.</p> <p>The prices and discounts quoted by the bidder shall conform to the requirements specified below.</p> <ul style="list-style-type: none"> All items and lots (if applicable) must be listed and priced separately. The price to be quoted shall be the total price of the bid, excluding any discounts offered. The bidder shall quote any unconditional discounts and indicate the method for their application. The INCOTERM shall be governed by the rules prescribed in the 2020 edition of INCOTERMS, published by The International Chamber of Commerce. The INCOTERM rules and place of destination are specified in Section 5: Schedule of Requirements. Prices quoted by the bidder shall be fixed during the bidder's performance of the contract and not subject to variation on any account unless otherwise specified in Section 3: Data Sheet. A bid submitted with an adjustable price shall be treated as non-compliant and shall be rejected. However, if in accordance with Section 3: Data Sheet, prices quoted by the bidder shall be subject to adjustment during the performance of the Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero. If indicated in Section 3: Data Sheet that bids are being invited for individual contracts (lots) and unless otherwise indicated in Section 3: Data Sheet, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer any price reduction (discount) for the award of more than one Lot shall specify the applicable price reduction.

<p>16. Bid currencies</p>	<p>All prices shall be quoted in the currency or currencies indicated in Section 3: Data Sheet. Where bids are quoted in different currencies, for the purposes of comparison of all bids:</p> <ul style="list-style-type: none"> • IOM will convert the currency quoted in the bid into the IOM preferred currency, in accordance with the prevailing IOM Operational Rate of Exchange on the date of the bid closure; and • In the event that IOM selects a bid for the award that is quoted in a currency different from the preferred currency in Section 3: Data Sheet, IOM shall reserve the right to award the contract in the currency of IOM's preference, using the conversion method specified above.
<p>17. Duties and taxes</p>	<p>The International Organization for Migration is exempt from all direct taxes, except charges for public utility services, and is exempt from customs restrictions, duties, and charges of a similar nature in respect of articles imported or exported for its official use. All quotations shall be submitted net of any direct taxes and any other taxes and duties, unless otherwise specified below:</p> <p>All prices shall:</p> <p><input type="checkbox"/> be inclusive of VAT and other applicable indirect taxes</p> <p><input checked="" type="checkbox"/> be exclusive of VAT and other applicable indirect taxes</p>
<p>18. Bid validity period</p>	<p>Bids shall remain valid for the period specified in Section 3: Data Sheet, commencing on the deadline for submission of bids. A bid valid for a shorter period may be rejected by IOM and rendered non-responsive.</p> <p>During the bid validity period, the bidder shall maintain its original bid without any change, including the availability of the key personnel, the proposed rates and the total price.</p> <p>In exceptional circumstances, prior to the expiration of the bid validity period, IOM may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing and shall be considered integral to the bid.</p> <p>If the bidder agrees to extend the validity of its bid, it shall be done without any change to the original bid but will be required to extend the validity of the bid security, if required, for the period of the extension, and in compliance with Article 19 (Bid Security) in all respects.</p> <p>The bidder has the right to refuse to extend the validity of its bid without forfeiting the bid security, if required, in which case, the bid shall not be further evaluated.</p>
<p>19. Bid Security</p>	<p>A bid security, if required by Section 3: Data Sheet, shall be provided in the amount and form indicated in the Section 3: Data Sheet. The bid security shall be valid for a minimum of thirty (30) days after the final date of validity of the bid.</p> <p>The bid security shall be included along with the bid. If a bid security is required by the ITB but is not found in the bid, the offer shall be rejected.</p> <p>If the bid security amount or its validity period is found to be less than is required by IOM, IOM shall reject the bid.</p> <p>In the event an electronic submission is allowed in Section 3: Data Sheet, bidders shall include a copy of the bid security in their bid and the original of the bid security must be sent via courier or hand delivery as per the instructions in Section 3: Data Sheet.</p> <p>Unsuccessful bidders' bid securities will be discharged/returned as promptly as possible but no later than thirty (30) days after the expiration of the period of bid validity prescribed by IOM pursuant to Article 18 (Bid Validity Period).</p> <p>The bid security may be forfeited by IOM, and the bid rejected, in the event of any, or combination, of the following conditions:</p> <ul style="list-style-type: none"> • If the bidder withdraws its offer during the period of the bid validity specified in Section 3: Data Sheet, or; • In the event the successful bidder fails: <ul style="list-style-type: none"> ○ to sign the Contract after IOM has issued an award; or ○ to furnish the Performance Security, insurances, or other documents that IOM may require as a condition precedent to the effectivity of the contract that may be awarded to the bidder.

<p>20. Joint Venture, Consortium or Association</p>	<p>If the bidder is a group of legal entities that will form or have formed a Joint Venture (JV), Consortium or Association for bid, each such legal entity will confirm in their joint bid that:</p> <ul style="list-style-type: none"> • they have designated one party to act as a lead entity, duly vested with authority to legally bind the members of the JV, Consortium or Association jointly and severally, and this will be evidenced by a duly notarised Agreement among the legal entities, which will be submitted along with the bid; and • if they are awarded the contract, the contract shall be entered into by and between IOM and the designated lead entity, who will be acting for and on behalf of all the member entities comprising the joint venture. <p>After the deadline for submission of bid, the lead entity identified to represent the JV, Consortium or Association shall not be altered without the prior written consent of IOM. If a JV, Consortium or Association's bid is the bid selected for award, IOM will award the contract to the joint venture, in the name of its designated lead entity. The lead entity will sign the contract for and on behalf of all other member entities.</p> <p>The lead entity and the member entities of the JV, Consortium or Association shall abide by the provisions of Article 21 (Only one Bid) herein in respect of submitting only one bid.</p> <p>The description of the organization of the JV, Consortium or Association must clearly define the expected role of each of the entities in the joint venture in delivering the requirements of the ITB, both in the bid and the JV, Consortium or Association Agreement. All entities that comprise the JV, Consortium or Association shall be subject to the eligibility and qualification assessment by IOM.</p> <p>A JV, Consortium or Association in presenting its track record and experience should clearly differentiate between:</p> <ul style="list-style-type: none"> • Those that were undertaken together by the JV, Consortium or Association; and • Those that were undertaken by the individual entities of the JV, Consortium or Association. <p>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 JV, Consortium or Association or those of its members, but should only be claimed by the individual experts themselves in their presentation of their individual credentials.</p> <p>JV, Consortium or Associations are encouraged for high value, multi-sectoral requirements when the spectrum of expertise and resources required may not be available within one firm.</p>
<p>21. Only one bid</p>	<p>The bidder (including the individual members of any Joint Venture) shall submit only one bid, either in its own name or as part of a Joint Venture.</p> <p>Bids submitted by two (2) or more bidders shall all be rejected if they are found to have any of the following:</p> <ul style="list-style-type: none"> • they have at least one controlling partner, director or shareholder in common; or • any one of them receive or have received any direct or indirect subsidy from the other/s; or • they have the same legal representative for purposes of this ITB; or • 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; • 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 some key personnel proposed to be in the team of one bidder participates in more than one bid received for this ITB process. This condition relating to the personnel, does not apply to subcontractors being included in more than one bid.
<p>22. Alternative bids</p>	<p>Unless otherwise specified in Section 3: Data Sheet, alternative bids shall not be considered. If submission of an alternative bid is allowed in Section 3: Data Sheet, a bidder may submit an alternative bid, but only if it also submits a bid conforming to the ITB requirements. Where the conditions for its acceptance are met, or justifications are clearly established, IOM reserves the right to award a contract based on an alternative</p>

	<p>bid.</p> <p>If multiple/alternative bids are being submitted, they must be clearly marked as “Main Bid” and “Alternative Bid”. If no indication is provided as to which bid is the main bid and which is/are the alternative bid(s), then all bids will be rejected.</p>
<p>23. Pre-bid conference</p>	<p>When appropriate, a pre-bid conference will be conducted at the date, time and location and according to any instructions specified in Section 3: Data Sheet.</p> <p>If it is stated in Section 3: Data Sheet that the pre-bid conference is mandatory, a bidder which does not attend the pre-bid conference shall become ineligible to submit a bid under this ITB.</p> <p>If it is stated in Section 3: Data Sheet that the pre-bid conference is not mandatory, non-attendance shall not result in disqualification of an interested bidder.</p> <p>IOM will not issue any formal answers to questions from bidders regarding the ITB or bid process during the pre-bid conference. All questions shall be submitted in accordance with Article 41 (Clarification of Bids).</p> <p>The pre-bid conference shall be conducted for the purpose of providing background information only. Without limiting Article 26 (Bidders Responsibility) bidders shall not rely upon any information, statement or representation made at the pre-bid conference unless that information, statement or representation is confirmed by IOM in writing.</p> <p>Minutes of the pre-bid conference will be disseminated as specified in Section 3: Data Sheet. No verbal statement made during the conference shall modify the terms and conditions of the ITB, unless specifically incorporated in the minutes of the bidder’s conference or issued/posted as an amendment to ITB.</p>
<p>24. Site inspection</p>	<p>When appropriate, a site inspection will be conducted at the date, time and location and according to any instructions specified in Section 3: Data Sheet.</p> <p>If it is stated in Section 3: Data Sheet that the site inspection is mandatory, a bidder who does not attend the site inspection shall become ineligible to submit a bid under this ITB.</p> <p>If it is stated in Section 3: Data Sheet that the site inspection is not mandatory, non-attendance, shall not result in disqualification of an interested bidder.</p> <p>Bidders participating in a site inspection shall be responsible for making and obtaining any visa arrangements that may be required for the bidders to participate in a site inspection.</p> <p>Prior to attending a site inspection, bidders shall execute an indemnity and a waiver releasing IOM in respect of any liability that may arise from:</p> <ul style="list-style-type: none"> (i) loss of or damage to any real or personal property; (ii) personal injury, disease or illness to, or death of, any person; (iii) financial loss or expense, arising out of the carrying out of that site inspection; and (iv) transportation by IOM to the site (if provided) as a result of any accidents or malicious acts by third parties. <p>IOM will not issue any formal answers to questions from bidders regarding the ITB or bid process during a site inspection. All questions shall be submitted in accordance with Article 8 (Clarification of solicitation documents).</p> <p>A site inspection will be conducted for the purpose of providing background information only. Without limiting Article 26 (Bidders Responsibility), bidders shall not rely upon any information, statement or representation made at a site inspection unless that information, statement or representation is confirmed by IOM in writing.</p>
<p>25. Errors or omissions</p>	<p>Bidders shall immediately notify IOM in writing of any ambiguities, errors, omissions, discrepancies, inconsistencies or other faults in any part of the ITB, with full details of those ambiguities, errors, omissions, discrepancies, inconsistencies or other faults.</p> <p>Bidders shall not benefit from such ambiguities, errors, omissions, discrepancies, inconsistencies or other faults.</p>
<p>26. Bidders’ responsibility to inform themselves</p>	<p>Bidders shall be responsible for informing themselves in preparing their bid. In this regard, bidders shall ensure that they:</p> <ul style="list-style-type: none"> ● examine and fully inform themselves in relation to all aspects of the ITB, including the Contract and all other documents included or referred to in this ITB; ● review the ITB to ensure that they have a complete copy of all documents;

	<ul style="list-style-type: none"> ● obtain and examine all other information relevant to the project and the scope of the requirements available on reasonable inquiry; ● verify all relevant representations, statements and information, including those contained or referred to in the ITB or made orally during any clarification meeting or site inspection or any discussion with IOM, its employees or agents; ● attend any Pre-bid conference or site inspection if it is mandatory under this ITB; ● fully inform and satisfy themselves as to requirements of any relevant authorities and laws that apply, or may in the future apply, to the supply of the goods, works and/or services; and ● form their own assessment of the nature and extent of the goods, works and /or services required as included in Section 5: Schedule of Requirements and properly account for all requirements in their bid. <p>Bidders acknowledge that IOM, its directors, employees and agents make no representations or warranties (express or implied) as to the accuracy, currency or completeness of this ITB or any other information provided to the bidders.</p>
<p>27. No material change(s) in circumstances</p>	<p>The bidder shall inform IOM of any change(s) of circumstances arising during the ITB process, including but not limited to:</p> <ul style="list-style-type: none"> ● a change affecting any declaration, accreditation, license or approval; ● major re-organizational changes, company re-structuring, a take-over, buy-out or similar event(s) affecting the operation and/or financing of the bidder or its major sub-contractors; ● a change to any information on which IOM may rely on assessing bids.
<p>SUBMISSION AND OPENING OF BIDS</p>	
<p>28. Instruction for bid submission</p>	<p>The bidder shall submit a duly signed and complete bid comprising the documents and forms in accordance with requirements in Section 3: Data Sheet. The Price Schedule shall be submitted together with the Technical Bid. The bid shall be delivered according to the method specified in Section 3: Data Sheet.</p> <p>The bid shall be signed by the bidder or person(s) duly authorized to commit the bidder. The authorization shall be communicated through a document evidencing such authorization issued by the legal representative of the bidding entity, or, if requested, a Power of Attorney, accompanying the bid.</p> <p>Bidders must be aware that the mere act of submission of a bid, in and of itself, implies that the bidder fully accepts the IOM General Conditions of Contract.</p>
<p>29. Deadline for bid submission</p>	<p>Complete bids must be received by IOM in the manner, and no later than the date and time, specified in Section 3: Data Sheet. If any doubt exists as to the time zone in which the Bid should be submitted, refer to http://www.timeanddate.com/worldclock/. It shall be the sole responsibility of the bidders to ensure that their bid is received by the closing date and time. IOM shall accept no responsibility for bids that arrive late due to the courier company or any technical issues and shall only recognize the actual date and time that the bid was received by IOM.</p> <p>IOM may, at its discretion, extend this deadline for the submission of bids by amending the solicitation documents in accordance with Article 9 Amendment of solicitation documents. In this case, all rights and obligations of IOM and bidders subject to the previous deadline will thereafter be subject to the new deadline as extended.</p>
<p>30. Withdrawal, substitution and modification of bids</p>	<p>A bidder may withdraw, substitute, or modify its bid after it has been submitted at any time prior to the deadline for submission by sending a written notice to IOM, 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, if any, must accompany the respective written notice. All notices must be submitted in the same manner as specified for submission of bids, by clearly marking them as “WITHDRAWAL”, “SUBSTITUTION” OR “MODIFICATION”.</p> <p>However, after the deadline for bid submission, the bids shall remain valid and open for acceptance by IOM for the entire bid validity period, as may be extended.</p> <p>Bids requested to be withdrawn prior to the deadline for submission of the bids shall be made available for collection by the bidder that submitted it within 15 days of its withdrawal. Otherwise, IOM shall have the right to discard such bid unopened without</p>

	further notice to the bidder. IOM shall not be responsible to return the bid to the bidder at IOM's cost.
31. Storage of bids	Bids received prior to the deadline of submission and the time of opening shall be securely kept unopened until the specified bid opening date stated in Section 3: Data Sheet. No responsibility shall be attached to IOM for prematurely opening an improperly addressed and/or identified bid.
32. Bid opening	Bids will be opened by a committee formed by IOM consisting of at least two (2) personnel. Bidders may attend the opening of the bids if stated in Section 3: Data Sheet. The bidders' names, modifications, withdrawals, bid prices, the condition of the envelope labels/seals, the number of folders/files and all other such details as IOM may consider appropriate will be announced at the opening and recorded on the bid opening report, which will be available for viewing only to bidders who have submitted a bid for a period of thirty days from the date of opening. Information not included in the bid opening report will not be provided to bidders. No bid shall be rejected at the opening stage, except for late submissions.
33. Late bids	Any bid received by IOM after the deadline for submission of bids will be destroyed unless the bidder requests that it be returned and assumes the responsibility and expenses for the re-possession of the returned bidding documents. In exceptional circumstances, late bids may be accepted if it is determined that the submission was sent in ample time prior to the bid closing and the delay could not be reasonably foreseen by the bidder or was due to force majeure.
EVALUATION OF BIDS	
34. Confidentiality	Information relating to the examination, evaluation, and comparison of bids, 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 or anyone on behalf of the bidder to influence IOM in the examination, evaluation and comparison of the bids or contract award decisions may, at IOM's decision, result in the rejection of its bid and may subsequently be subject to the application of prevailing IOM's vendor sanctions procedures.
35. Evaluation of bids	IOM shall evaluate a bid using only the methodologies and criteria defined in this ITB. No other criteria or methodology shall be permitted. IOM shall conduct the evaluation solely based on the bids received according to the evaluation criteria in Section 4. Evaluation of bids shall be undertaken in the following steps: a) Preliminary examination b) Evaluation of eligibility and qualification c) Evaluation of technical bids d) Evaluation of prices of bids found to be substantially technically compliant. After completion of the evaluation, but prior to award, IOM shall conduct a post-qualification assessment of the bidder recommended for the award (if pre-qualification was not done) as per Article 40 (Post-qualification).
36. Preliminary examination	IOM shall examine the bids to determine whether they are complete with respect to minimum documentary requirements, whether the documents have been properly signed, and whether the bids are generally in order, among other indicators that may be used at this stage. IOM reserves the right to reject any bid at this stage.
37. Evaluation of eligibility and qualification	The eligibility and Qualification of the bidder will be evaluated against the Minimum Eligibility/Qualification requirements specified in Section 4: Evaluation Criteria and in Article 4 (Eligible Bidders).
38. Evaluation of technical bids	Technical evaluation will be conducted to establish substantial compliance, as per the criteria included in Section 4: Evaluation Criteria. When the bid varies in one or more aspect/s from the minimum technical specifications and/or delivery requirements specified in Section 5: Schedule of Requirements, the bid will not be considered substantially compliant and will not be evaluated further.

<p>39. Evaluation of prices</p>	<p>The prices of bids found to be substantially technically compliant will be compared to identify the most substantially compliant bid which represents the lowest overall costs to IOM.</p>
<p>40. Post-qualification</p>	<p>IOM reserves the right to undertake a post-qualification assessment, aimed at determining, to its satisfaction, the validity of the information provided by the bidder. Such exercise shall be fully documented and may include, but need not be limited to, all or any combination of the following:</p> <ul style="list-style-type: none"> a) Verification of accuracy, correctness and authenticity of the information provided by the bidder; b) Validation of the 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 over the bidder, or with previous clients, or any other entity that may have done business with the bidder; d) Inquiry and reference checking with previous clients on the performance on ongoing or completed contracts, including physical inspections of previous works, as deemed necessary; e) Physical inspection of the bidder's offices, branches or other places where business transpires, with or without notice to the bidder; f) Other means that IOM may deem appropriate, at any stage within the selection process, prior to awarding the contract.
<p>41. Clarification of bids</p>	<p>IOM may request clarification or further information in writing from the bidders at any time during the evaluation process. The bidders' responses shall not contain any changes regarding the substance or price of the bid, except to confirm the correction of arithmetic errors discovered by IOM in the evaluation of the bids, in accordance with Instructions to Bidders Article 25 (Errors or omissions). IOM may use such information in interpreting and evaluating the relevant bid but is under no obligation to take it into account.</p>
<p>42. Responsiveness of bid</p>	<p>IOM's determination of a bid's responsiveness is to 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 bidding documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:</p> <ul style="list-style-type: none"> a) affects in any substantial way the scope, quality, or performance of the goods, services and/or works specified in the contract; or b) limits in any substantial way, inconsistent with the bidding documents, IOM's rights or the bidder's obligations under the contract; or c) if rectified would unfairly affect the competitive position of other bidders presenting substantially responsive bids. <p>If a bid is not substantially responsive, it shall be rejected by IOM and may not subsequently be made responsive by the bidder by correction of the material deviation, reservation, or omission.</p>
<p>43. Nonconformities, reparable errors and omission</p>	<p>Provided that a bid is substantially responsive, IOM may waive any non-conformities or omissions in the bid that, in the opinion of IOM, do not constitute a material deviation. These are a matter of form and not of substance and can be corrected or waived without being prejudicial to other bidders.</p> <p>Provided that a bid is substantially responsive IOM may request the bidder to submit the necessary information or documentation, within a reasonable period, 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.</p> <p>For bids that have passed the preliminary examination, IOM shall check and correct arithmetical errors as follows:</p> <ul style="list-style-type: none"> 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 IOM there is an obvious misplacement of the decimal point in the unit price; in

	<p>which case, the line-item total as quoted shall govern and the unit price shall be corrected;</p> <p>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</p> <p>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.</p> <p>If the bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be rejected, and its bid security may be forfeited.</p>
44. Right to accept any bid and to reject any or all bids	IOM reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for IOM's action. IOM shall not be obliged to award the contract to the lowest priced offer that is not technically compliant.
45. Samples	<p>Where required as per Section 5: Schedule of Requirements, free, non-returnable samples shall be provided by the bid submission deadline for evaluation and testing by IOM or their representative, of the item and/or the packing and packaging, prior to any award. Samples will be subject to technical review and laboratory analysis where appropriate. Samples provided to IOM are non-returnable unless otherwise stated. Samples should be marked with the ITB number.</p> <p>If a bidder fails to provide samples or documents requested by IOM in a timely manner, IOM may declare the bid unsuccessful.</p>
AWARD OF CONTRACT	
46. Award criteria	<p>In the event of a Contract award, IOM shall award the contract to a bidder who has been determined as eligible and qualified and whose bid has been determined to be the lowest-priced, substantially technically compliant offer to the ITB. IOM reserves the right to conduct negotiations with the bidder recommended for the award on the content of their bid.</p> <p><u>NB: A bidder who already has 3 ongoing contracts with IOM may not be eligible unless they can prove its financial capacity without affecting the existing contracts.</u></p>
47. Right to vary requirement at time of award	At the time the Contract is awarded, IOM reserves the right to increase or decrease the quantity of goods, works and/or services originally specified in Section 5: Schedule of Requirements, provided this does not exceed the percentages specified in Section 3 Data Sheet, and without any change in the unit prices or other terms and conditions of the bid and the bidding document.
48. Notification of award	Prior to the expiration of the period of bid validity, IOM will notify the successful bidder in writing by email, fax or post, that its bid has been accepted. Please note that the bidder, if not already registered at the appropriate level in UNGM, will be required to complete the vendor registration process on the UNGM prior to the signature and finalization of the contract.
49. Debriefing	In the event that a bidder is unsuccessful, the bidder may request a debriefing from IOM. The purpose of the debriefing is to discuss the strengths and weaknesses of the bidder's submission, in order to assist the bidder in improving its future bids for IOM procurement opportunities. The content of other bids and how they compare to the bidder's submission shall not be discussed.
50. Performance security	<p>The successful bidder, if so specified in Section 3: Data Sheet shall furnish performance security in the amount and form specified therein, within the specified number of days after receipt of the contract from IOM. Banks issuing performance securities must be acceptable to the IOM controller, i.e. banks certified by the central bank of the country to operate as a commercial bank. IOM shall promptly discharge the bid securities of the unsuccessful bidders pursuant to Article 19 (Bid Security).</p> <p>Failure of the successful bidder to submit the above-mentioned performance security or sign the contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event IOM may award the contract to the next lowest evaluated bidder, whose offer is substantially responsive and is determined by IOM to be qualified to perform the contract satisfactorily.</p>

<p>51. Bank guarantee for advance payment</p>	<p>Except when the interests of IOM so require, it is IOM's standard practice not to make advance payment(s) (i.e., payments without having received any outputs). If an advance payment is allowed as per Section 3: Data Sheet, and if specified there, the bidder shall submit a Bank Guarantee in the full amount of the advance payment. Banks issuing bank guarantees must be acceptable to the IOM controller, i.e., banks certified by the central bank of the country to operate as a commercial bank.</p>
<p>52. Liquidated Damages</p>	<p>If specified in Section 3: Data Sheet, IOM shall apply Liquidated Damages for the damages and/or risks caused to IOM resulting from the Contractor's delays or breach of its obligations as per the Contract.</p>
<p>53. Proposal protest</p>	<p>Any proposer that believes to have been unjustly treated in connection with this proposal process or any contract that may be awarded as a result of such proposal process may submit a complaint to mscu@iom.int.</p>

SECTION 3: DATA SHEET

The following specific data shall complement, supplement, or amend the Provisions in Section 2: Instructions to Bidders. In case there is a conflict, the provisions herein shall prevail over those in Section 2: Instructions to Bidders.

Ref. Article in Section 2		Specific Instructions / Requirements
1.	Scope	The reference number of this Invitation to Bid (ITB) is 4200753560 Wau TP28. Construction of infrastructure projects in Wau County, Western Bahr El Ghazal State, South Sudan under ECRP II Project as further described in Section 5 of this ITB.
4.	Eligible bidders	Bidders from all countries are eligible to bid.
5.	Eligible goods, works and services	Goods, works and/or services with origin in all countries are eligible in this bidding process.
8.	Clarification of solicitation documents	Contact details for clarification of solicitation documents: Focal Person: Manuchehr Munavarov / THON Thon Agoth Paul Address: New Industrial Area, Northern Bari, Juba South Sudan. E-mail address: mmunavarov@iom.int / tagoth@iom.int ATTENTION: BIDS SHALL NOT BE SUBMITTED TO THE ABOVE ADDRESS BUT TO THE ADDRESS FOR BID SUBMISSION SET OUT BELOW (see Data Sheet Article 28).
		Deadline for submitting requests for clarifications/questions: Date: 26-Sep-24 Time: 16:00PM Time zone: Central Africa Time (CAT)
		Manner of disseminating supplemental information to the ITB and responses /clarifications to queries: Direct communication to prospective bidders by email.
11.	Language	All bids, information, documents and correspondence exchanged between IOM and the bidders in relation to this bid process shall be in English.
15.	Price adjustment	The price quoted by the Bidder shall not be subject to adjustment during the performance of the contract.
15.	Partial bids (lots)	Partial bids shall not be allowed. Bidders must quote prices for the total requirement requested under Section 5. Schedule of Requirements. Evaluation will be done for the total requirement.
16.	Bid currencies	Prices shall be quoted in USD
17.	Duties and taxes	All prices shall: Be exclusive of VAT and other applicable indirect taxes.
18.	Bid validity period	120 days
19.	Bid security	Required in the amount of [enter amount]. 2.0% of the total bid amount. The bid security will be in the same currency as stipulated in Article 16: Bid currencies. Acceptable forms of bid security <input checked="" type="checkbox"/> Bid security form template set out in Section 7 <input type="checkbox"/> Any bank-issued cheque / cashier's Cheque / certified cheque
22.	Alternative bids	Not Allowed.
23.	Pre-bid conference	Will be conducted. Time and time zone: 10:00 AM (CAT) Date: 24-Sep-24 Venue: IOM New Conference Hall The focal point for the arrangement is: Name: Manuchehr Munavarov / THON Thon Agoth Paul Telephone: 0912370684 E-mail: mmunavarov@iom.int / tagoth@iom.int

		<p>The Pre-bid conference is:</p> <p><input type="checkbox"/> mandatory</p> <p><input checked="" type="checkbox"/> not mandatory</p> <p>Minutes of the Pre-bid conference will be disseminated by Direct communication to prospective bidders by email.</p>
24.	Site inspection	<p>Bidders may carry out their own site inspection with the prior written approval of [name of organisation].</p> <p>Time and time zone: CAT Date: To be coordinated with the IOM focal point below Location: To be coordinated with the IOM focal point below</p> <p>The focal point for the arrangement is: Name: GORDON Onji Charles Christopher Telephone: +211 912 379 798 E-mail: ogordon@iom.int</p> <p>Bidders shall notify the focal point 3 (three) days in advance as to whether or not they intend to participate in the site inspection and the details of their representatives who will attend.</p> <p>The site inspection is:</p> <p><input type="checkbox"/> mandatory</p> <p><input checked="" type="checkbox"/> not mandatory</p>
28.	Instruction for bid submission	<p>Allowable manner of submitting proposals:</p> <p><input type="checkbox"/> e-tendering</p> <p><input type="checkbox"/> Email</p> <p><input checked="" type="checkbox"/> Courier / hand delivery</p> <p>SUBMISSION BY COURIER / HAND DELIVERY:</p> <p>Bid submission address: New Industrial Area, Northern Bari, Juba, South Sudan</p> <ul style="list-style-type: none"> ▪ The bidder shall submit the bid in one sealed envelope containing the technical and price components. ▪ The envelope shall indicate the name and address of the bidder. ▪ The outer envelope must be clearly marked with the following: *ONLY TO BE OPENED BY AUTHORISED PERSONNEL* <p>Invitation to Bid Reference: 4200753560 Wau TP28 Attention: Bid Evaluation Committee (BEC) Bidders name and details:</p>
29.	Deadline for bid submission	<p>Date: 09-Oct-24 Time: 16:00PM Time zone: CAT</p>
32.	Bid opening	<p><input checked="" type="checkbox"/> Public bid opening will not be held</p> <p><input type="checkbox"/> Public bid opening will be held as per below details.</p> <p>Date and Time: Venue:</p>
	Expected date for commencement of contract	01-Nov-24
47.	Right to vary requirement at time of award	<p>The maximum percentage by which quantities¹ or threshold may be increased is 20%</p> <p>The maximum percentage by which quantities or threshold may be decreased is 20%</p>

¹ **Determinate or Estimated Amount:** It can also refer to a **determinate or estimated amount**.

	Contract award to one or more bidder	IOM will award a contract to: One Bidder Only
50.	Type of contract to be awarded	Construction Contract See Section 6: for sample contract.
50.	Conditions of contract to apply	Construction Contract See Section 6: for sample contract.
52.	Performance security	Required for contracts with total value equivalent or over 300,000 US Dollars. Amount of Performance Security is 10% from the total Contract Price. The performance security will be in the same currency as stipulated in Article 16: Bid currencies. The Performance Security shall be in the form of a Bank Guarantee as set out in Section 6 for template
53.	Advance payment	Not Allowed
54.	Liquidated Damages	Will be imposed as follows: As per the contract.
	Other information related to the ITB	See attached TOR and relevant Annexes (Annex 1A to 1G)

SECTION 4: EVALUATION CRITERIA

Preliminary Examination Criteria

All criteria will be evaluated on a Pass/Fail basis and checked during Preliminary Examination.

Criteria	Documents to establish compliance
Completeness of the bid	All documents and technical documentation requested in Section 2: Instructions to Bidders Article 12 have been provided and are complete
Bidder accepts IOM General Conditions of Contract as specified in Section 6*	Form C: Bid Submission
Bid Validity*	Form C: Bid Submission
Bid Security with a compliant validity period*	Form I: Bid Security Form

Eligibility and Qualification Criteria

All criteria will be evaluated on a Pass/Fail basis.

If the bid is submitted as a Joint Venture, Consortium or Association, each member should meet the minimum criteria, unless otherwise specified.

Eligibility Criteria	Documents to establish compliance
Bidder is a legally registered entity*	Form D: Bidder Information
Bidder belongs to a diverse supplier group including micro, small or medium sized enterprise, women or youth owned business or other.	Form D: Bidder Information
Bidder is not suspended, nor otherwise identified as ineligible by any UN Organization, the World Bank Group or any other International Organisation in accordance with Section 2 Article 4*	Form C: Bid Submission
No conflicts of interest in accordance with Section 2 Article 4*	Form C: Bid Submission
Bidder has not declared bankruptcy, in not involved in bankruptcy or receivership proceedings, and there is no judgment or pending legal action against the vendor that could impair its operations in the foreseeable future*	Form C: Bid Submission
Certificates and Licences²: <ul style="list-style-type: none"> ● Duly authorized to act as Agent on behalf of the Manufacturer, or Power of Attorney, if bidder is not a manufacturer, where applicable ● Official appointment as local representative, if bidder is submitting a bid on behalf of an entity located outside the country ● Export/Import Licenses, if applicable ● Valid Operation license* ● Valid Certificate of incorporation* ● Valid Drilling license, where applicable* ● Valid Tax clearance certificates* ● Valid Vehicle Insurance and logbook* ● Confirmation letter (or draft policy) from an insurer stating that the required insurance policies will be provided to the bidder, if selected* Other required Documents: Form C: duly completed, signed/stamped bid submission* -electronic version of the bid (all documents) on USB flash stick Form D: duly completed, signed/stamped bidder information (vendor information sheet)* Form E: duly completed, signed/stamped joint venture / consortium / association information, if applicable* Form F: duly completed, signed/stamped eligibility and qualification form* -company profile -statements of satisfactory performance from the top 3 (three) clients for similar projects in the past three years*	Form D: Bidder Information

² Any expired certificates and license will not be accepted as only valid ones shall be considered.

<p>-copies of the audited financial statements (balance sheets, including all related notes, and income statements) for the last three years*</p> <p>Form G: duly completed, signed/stamped technical bid*</p> <p>Form H: duly completed, signed/stamped price schedule form*</p> <p>Form J: duly completed, signed/stamped key supervisory staff schedule form*</p> <p>Form K: duly completed, signed/stamped construction schedule form*</p> <p>Form L: duly completed, signed/stamped construction equipment and machinery schedule form*</p> <p>Important Note: Documents marked (*) are mandatory. Failure by the Bidder to provide any of those documents may serve as a ground of disqualification in the process of evaluation of bidders.</p>	
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Qualification Criteria	Documents to establish compliance
History of non-performing contracts: Non-performance of a contract did not occur as a result of contractor default within the last 3 years.	Form F: Eligibility and Qualification Form
Litigation History: No consistent history of court/arbitral award decisions against the bidder for the last 3 years.	Form F: Eligibility and Qualification Form
Previous Experience:	
Minimum 3 years of relevant experience.	Form F: Eligibility and Qualification Form
Minimum 3 contracts of similar value, nature and complexity implemented over the last 3 years. <i>(For JV/Consortium/Association, all Parties cumulatively should meet requirement).</i>	Form F: Eligibility and Qualification Form
Financial Standing:	
Liquidity: the ratio Average current assets / Current liabilities over the last 3 years must be equal or greater than 1.	Copy of audited financial statements for the last three years. / Form F: Eligibility and Qualification Form
Turnover: Bidders should have an annual sales turnover of minimum 500,000 USD for the last three years. <i>(For JV/Consortium/Association, all Parties cumulatively should meet requirement).</i>	Copy of audited financial statements for the last three years. Form F: Eligibility and Qualification Form

Technical Evaluation Criteria

Criteria	Documents to establish compliance
Goods/works/services offered in the bid are substantially compliant and do not contain any material deviation(s) from the minimum required as included in Section 5: Schedule of Requirements.	Form G: Technical Bid
The bid is substantially compliant with the minimum Delivery Requirements included in Section 5: Schedule of Requirements and do not contain any material deviation(s).	Form G: Technical Bid Form H: Price Schedule Annex 1B: Bill of Quantities
Key Supervisory Staff Schedule	Form J: Key Supervisory Staff Schedule Form
Construction Schedule Project proposed schedule ³ appropriate and within required time frame	Form K: Construction Schedule Form
Construction Equipment and Machinery Schedule	Form L: Construction Equipment and Machinery Schedule Form

This is a detailed plan that outlines the sequence and timing of different tasks that need to be completed throughout a project. It includes start and finish dates for each task, the duration, and the resources allocated. It's a roadmap for the project's execution and is used to track progress and ensure that the project is on time.

Evaluation of Prices

Criteria	Documents to establish compliance
Price comparison shall be based on the landed price, including transportation, insurance and the total cost of ownership (including spare parts, consumption, installation, commissioning, training, special packaging, etc., where applicable).	Annex 1B: Bill of Quantities Form H: Price Schedule
Note: Lowest bidder may not be selected if they don't meet other TE criteria (Section 2 (44) & section 4)	Annex 1B: Bill of Quantities Form H: Price Schedule ITB (Section 2 (44) & section 4)
Arithmetical check and ranking of bidders who passed technical evaluation. Detailed evaluation will be focussed on the 3 - 5 lowest priced bids. Further higher priced bids shall be added for evaluation, if necessary	Annex 1B: Bill of Quantities Form H: Price Schedule

SECTION 5: SCHEDULE OF REQUIREMENTS

Summary of Requirements: Construction of infrastructure projects in Wau County, Western Bahr El Ghazal State, South Sudan under ECRP II Project. See attached BoQ and TOR.

Requirements are comprised of the following:

Schedule of Requirement: This is the detailed descriptions of the work to be performed, the materials and equipment to be supplied, and the standards and specifications that must be met. The schedule forms part of the contract documents and serves as a reference point for both the contractor and the client to ensure that the construction work is carried out as agreed upon by the parties.

The schedule of requirements also includes the duration of each task, the start and end dates, workplan for site mobilization, substructure works, superstructures work, mechanical, electrical, plumbing, site cleaning and demobilization.

Delivery Requirements: These are the specific conditions and terms that need to be met for the delivery of the project. It includes the quality standards, the materials and equipment to be supplied, and the compliance with various management plans such as health and safety, environmental, and social management plans.

In essence, the project schedule is about when and how the project tasks will be executed, while delivery requirements are about the conditions that must be met upon the delivery of the project. Both are crucial for the successful completion of a construction project, but they serve different purposes within the project management framework.

Project Name	Drilling 9 of new boreholes, construction of water yards and installation of handpumps with India mark II hand pump Wau County, Western Bahr El Ghazal State.	
Project Site 1	Ngo-gor, Rafili Boma in Kpaile Payam of Wau County, Western Bahr El Ghazal State. Scope of Work: Drilling of boreholes and Construction of new water yard with 20 cubic meter steel storage, 6 meters high tower-and installation of submersible pump powered by solar system, Construction of chain-link fence, animal trough, spreading and compacting murrum around the water yard tower and the Kiosks/water points.	1 WORK
Project site 2	Lala, Taban Boma Kpaile Payam Wau County, Western Bahr El Ghazal State. Scope of Work: Drilling of boreholes and Construction of new water yard with 20 cubic meter steel storage, 6 meters high tower-and installation of submersible pump powered by solar system, Construction of chain-link fence, animal trough, spreading and compacting murrum around the water yard tower and the Kiosks/water points.	
Project Site 3	Bola one, Rafili Boma Kpaile Payam Wau County, Western Bahr El Ghazal State. Scope of Work: Drilling of borehole and installation with India Mark II handpump	
Project Site 4	Gettan Primary School, Gettan Boma Kpaile Payam Wau County, Western Bahr El Ghazal State. Scope of Work: Drilling of borehole and installation with India Mark II handpump	
Project Site 5	Averu Village, Gettan Boma Kpaile Payam Wau County, Western Bahr El Ghazal State. Scope of Work: Drilling of borehole and installation with India Mark II handpump	
Project site 6	Ayo Village Gettan Boma Kpaile Payam Wau County, Western Bahr El Ghazal State. Scope of Work: Drilling of borehole and installation with India Mark II handpump	
Project site 7	Khor Gizaz village, Kpaile Boma, Kpaile Payam Wau County, Western Bahr El Ghazal State. Scope of Work: Drilling of borehole and installation with India Mark II handpump	
Project Site 8	Goti Habuna, Kpaile Boma Kpaile Payam Wau County, Western Bahr El Ghazal State. Scope of Work: Drilling of borehole and installation with India Mark II handpump	
Project site 9	Ngo-nvolo South, Rafili Boma, Kpaile Payam Wau County, Western Bahr El Ghazal State. Scope of Work: Drilling of borehole and installation with India Mark II handpump	
Schedule	The project is expected to commence in November 2024 and be completed within 6 months with a twelve-month warranty period.	

All 9 project sites are considered to be one construction work.

SECTION 6: CONDITIONS OF CONTRACT AND CONTRACT FORMS

6.1 Contract Form with General Conditions of Contract

IOM office-specific Ref. No.	
IOM Project Code	

CONSTRUCTION AGREEMENT
between the
International Organization for Migration
and
[Name of the Contractor]

This Construction Agreement is entered into between the **International Organization for Migration**, a related organization of the United Nations, acting through its [insert office name, e.g., Mission in XXX], [Address of the Mission], represented by [Name, Title of Director, CoM, HoO] (hereinafter referred to as “**IOM**”), and **[Name of Contractor]**, of [address], in [country], represented by [Name, Title of the representative of the Contractor], (hereinafter referred to as the “**Contractor**”). IOM and the Contractor are also referred to individually as a “**Party**” and collectively as the “**Parties**.”

1. Introduction and Integral Documents

- 1.1 IOM intends to engage the services of [Contractor] in connection with [name of project] located at [address] (the “**Project**”). As part of the Project, IOM requires the Contractor to perform construction services, on the terms and conditions specified in this Agreement.
- 1.2 The following documents form part of this Agreement: *[add/delete as necessary]*
 - (a) **Annex A** - Scope of Work, Technical Specifications, and Drawings (the “**Works**”);
 - (b) **Annex B** - Bill of Quantities (including Unit Cost);
 - (c) **Annex C** - Approved Work Schedule;
 - (d) **Annex D** - Advance Payment Bank Guarantee Template
 - (e) **Annex E** – Performance Security Template;
 - (f) **Annex F** - Work Variation Order Template; and
 - (g) **Annex G** – IOM Terms and Conditions for European Union Funded Service Type Agreements

In the event of conflict between the provisions of any Annex and the terms of the main body of the Agreement, the latter shall prevail.

- 1.3 All correspondence, instructions, notes and other communications relating in any way to the performance of this Agreement will be in the English language. The English language version of the Agreement will at all times be the version of the Agreement which binds the Parties. Translations of the Agreement into languages other than English may be prepared for working purposes but will have no legally binding effect on the Parties.
- 1.4 Unless otherwise advised by IOM in writing, all Project reports and other issues arising under this Agreement shall be addressed to IOM’s authorized contact person under Article 21 of this Agreement.

2. Scope of Work

- 2.1 The Contractor shall furnish all the necessary materials, tools and equipment, labor, supervision, and other services, for the satisfactory and timely completion of the Works in accordance with this Agreement.
- 2.2 Any changes, modifications, deviations and substitutions in the Works shall require prior written approval by IOM and shall be made in accordance with Article 7 (“**Work Variation**”).

- 2.3 In case necessary, IOM reserves the right to supply any materials, equipment or resources for the Works. Any adjustment to the total Contract Price arising from IOM's actions under this clause shall be agreed in writing pursuant to Article 7 of this Agreement.

3. Contract Price

- 3.1 The total contract price (the "Contract Price") shall be [currency code] [amount in numbers] ([amount in words]) only, inclusive of all applicable fees, taxes and permits that may be imposed by any Government entity in connection with the execution, completion and turnover of the Works pursuant to this Agreement.
- 3.2 The Contract Price and Unit Cost (as stated in the Bill of Quantities) shall not be altered except where Article 2.3 or Article 7 applies.
- 3.3 In consideration for the services performed under this Agreement, the total amount payable by IOM to the Contractor pursuant to this Agreement shall not exceed the Contract Price, regardless of any increase in wage or labor cost or fluctuation in the cost of materials and equipment, occurring at any time. For the avoidance of doubt, the Contractor shall be liable for any under-estimation of the requirements of this Agreement and any changes in costs whether due to inflation, currency devaluation or otherwise.

4. Manner of Payment

- 4.1 In consideration for the services performed under this Agreement, IOM shall pay the Contract Price in accordance with the following payment schedule:
- (a) (Applicable if an advance payment is made) IOM shall release an advance payment equivalent to [percentage] of the Contract Price in the amount of [currency] [insert amount in numbers] (amount in words and currency in words) within 7 (seven) calendar days from the Contractor's signature of this Agreement and Contractor's submission of and IOM's approval of the following items:
- i. Drawings and Technical Documents for Permit Purposes;
 - ii. Approved Detailed Construction and Workings Drawings;
 - iii. Work Schedule;
 - iv. List of Sub-Contractors and Suppliers (if applicable);
 - v. Unconditional Bank Guarantee equivalent to [percentage to match advance payment] percent of the Contract Price to guarantee the advance payment, if applicable;
 - vi. Performance Security if required under Article 9.
- (b) IOM will pay the Contractor [currency code] amount in numbers (amount in words) on confirmation by IOM of satisfactory progress toward the completion of (amount)% ([amount in words] percent) actual measured work as per Bill of Quantities at Annex B and logbook.
- (c) IOM will pay the Contractor [currency code] amount in numbers (amount in words) after the completion of 100% (one hundred percent) of the Works and inspection and provisional acceptance of the completed Works.
- (d) The balance of 10% (ten percent) of the total Contract Price in the amount of [currency code] amount in numbers (amount in words) will be held for 12 (twelve) months after provisional acceptance of the completed Works in accordance with Article 10 of this Agreement.
- 4.2 Payments for the Works will be done in installments in accordance with the Payment Schedule above in [currency] ([currency code]) by [bank transfer] to the following bank account:

Bank Name:

Bank Branch:

Bank Account Name:

Bank Account Number:

Swift Code:

IBAN Number:

Any change to the bank account shall be formalized by an amendment to this Agreement.

- 4.3 The Contractor's progress billing shall be submitted to and certified by IOM's appointed Project Manager who will verify the value of the work done with regard to the value of the quantities of items completed in the Bill of Quantities. The Contractor shall submit all progress billing with the following attachments:
- (a) Updated Financial Statement of the Project;
 - (b) Statement of Completed Works;
 - (c) Progress Photos; and
 - (d) Contractor's Sales Invoice.
- 4.4 Within 7 (seven) calendar days of Contractor's submission of the progress billing and Statement of Completed Works and all required attachments to the Project Manager, the Project Manager shall evaluate the said progress billing(s). Evaluated and approved progress billings shall be due and payable within 10 (ten) working days from date of approval of progress billing. During this period of evaluation and processing of payments, the Contractor shall continue progress of the work in accordance with the Approved Work Schedule.
- 4.5 Any payment(s) made by IOM does not imply nor signify acceptance of any portion of the Works and does not waive IOM's right to enforce the Contractor's warranty as provided in Article 14.2 of this Agreement, nor to apply penalties for delay.
- 4.6 The Contractor can only submit the final progress billing as per the Payment Schedule when the Contractor has satisfactorily completed and submitted:
- (a) All works, including Work Variation Orders, as stipulated in the annexed documents;
 - (b) Rectification of all reported non-conforming works;
 - (c) Completed demobilization and clean-up of site;
 - (d) Applicable materials and work test certificate/s;
 - (e) Approval duly signed by the Project Manager and by the Contractor's authorized representative that the Work is completed in accordance with drawings and specifications and in compliance with applicable laws, rules and regulations of the local and/or national government of the location where the Project is to be implemented.
- 4.7 A Certificate of Provisional Acceptance of completed Works shall be issued by IOM when each of the requirements under Article 4.6 have been fulfilled to its satisfaction.
- 4.8 A Certificate of Provisional Acceptance of terminated Works shall be issued by IOM if IOM terminates the contract in accordance with Article 26. This Certificate will indicate the Completion Rate as per Article 6.2 and the Contractor shall remain responsible for the rectification of non-conforming or defective portions of the Works in accordance with Article 14.2.
- 4.9 A Certificate of Final Acceptance shall be issued by IOM 12 (twelve) months after the date a Certificate of Provisional Acceptance of the completed or terminated Works is issued provided that any works required during the warranty period have been completed to its satisfaction.

5. Completion Period

- 5.1 The Contractor shall mobilize all necessary and appropriate resources and coordinate all work activities with IOM to ensure commencement of the Works on [insert date] and completion and turn-over of the Works to IOM by [insert date] ("Completion Date").
- 5.2 If the Contractor is unable to complete the Works by the Completion Date, the Contractor may request a time extension in writing explaining the reasons for the delay. Any adjustment to the costs of performance security,

or extension of required insurances, for the performance of the Works due to such time extension shall be for the account of the Contractor.

- 5.3 IOM shall not approve requests for time extension for reasons such as but not limited to:
- (a) Project location, conditions and restrictions identified during time of tender and award of the Agreement;
 - (b) Normal weather and climatic conditions prevailing at the site location;
 - (c) Logistics, implementation, coordination problems and other reasons within the control of the Contractor;
 - (d) Financial, operational and labor difficulties of the Contractor or any of its sub-contractor(s) or supplier/s;
 - (e) Any required rectification of non-conforming work items; and
 - (f) Nature and condition of terrain.
- 5.4 IOM may, at its sole discretion, revise the Completion Date as stated in Article 5.1 in response to the Contractor's reasonable request for time extension caused by any of the following:
- (a) Force Majeure as described in Article 16;
 - (b) Approved Work Variation Order/s requiring additional time for completion by the Contractor, as agreed between the Parties;
 - (c) IOM's failure to make timely payments for the Works completed to IOM's satisfaction.

5.5 IOM shall be entitled to charge liquidated damages equivalent to 0.1% (one-tenth of one percent) of the total Contract Price for each day of delay until the entire Works are completed and accepted by IOM according to Article 4.7. IOM may, at its sole discretion, grant a conditional time extension whereby the Works are not considered to be in delay during the time extended, but in case of non-completion within the extended period, the calculation of liquidated damages for delay outlined herein shall be from the original Completion Date before extension. If the Agreement is terminated by either Party after the Completion Date (before extension) due to non-completion of the Works, the Contractor shall be liable to IOM for liquidated damages equivalent to 0.1% (one-tenth of one percent) of the total Contract Price for each day from the Completion Date (before extension) to the notice date of termination.

6. Work Schedule

- 6.1 Within the timeframe specified in the Notice of Award (NoA) and no later than the date of signature of this Agreement, the Contractor shall submit to IOM a work schedule (the "**Work Schedule**") showing the order and timing for all the activities in the Works.
- 6.2 The Contractor shall keep and update a daily logbook on all progress and matters relating to the Works in accordance with industry standards. The logbook shall be inspected and verified for accuracy, daily or at an interval designated by IOM, by a designated IOM staff or its authorized representatives. The logbook shall be the authoritative source of information for determining the extent of the Works completed (the "**Completion Rate**"). In case the Contractor fails to update the logbook properly with the required verification, IOM shall have the right to solely determine the Completion Rate which cannot be challenged by the Contractor.
- 6.3 The Contractor shall submit an updated Work Schedule as and when requested by IOM or its Project Manager.
- 6.4 The Contractor shall notify IOM through its Project Manager of any proposed change in the Work Schedule. Any change shall be subject to prior written approval by IOM. The Contractor shall also submit to the Project Manager for approval a revised schedule within 7 (seven) calendar days from the date of proposing the change.
- 6.5 If at any time IOM deems that Contractor's actual progress is inadequate to meet the requirements of this Agreement, IOM may notify the Contractor to take such steps as may be necessary to improve its progress. If after a reasonable period, as determined by IOM, the Contractor still does not improve its performance, IOM may require an increase in Contractor's labour force, the number of shifts, workdays per week, overtime hours, amount of equipment, or require expedited shipment of equipment and materials, all at the Contractor's cost and without additional cost to IOM.

6.6 If at any time the Contractor's labor force is inactive due to unpaid wages, the Contractor shall be liable to IOM for liquidated damages equivalent to 0.1% (one-tenth of one percent) of the total Contract Price for each day of work stoppage until the entire labor force resumes work on the Project. This penalty shall be applied independently of any other sanction or penalty allowed for in this Agreement.

7. Work Variation

- 7.1 IOM reserves the right at any time to order any variations, alterations or modifications in the scope of work, technical specification, or drawings relating to the Works, as specified under Annex A herein, which are deemed necessary or appropriate by IOM in the best interest of the Project ("**Work Variation**").
- 7.2. The Contractor shall, within ten (10) calendar days from receipt of notice of Work Variation from IOM, confirm in writing to IOM the impact of the Work Variation on the Contract Price, Payment Schedule, Work Schedule and Completion Date, if any.
- 7.3 If any work in the Work Variation corresponds with an item description in the Bill of Quantities, the rate in the Bill of Quantities shall be used to calculate the value of the Work Variation. In other cases, the cost of such Work Variation shall be evaluated and compensated as agreed between the Parties. In such case, the Contractor shall provide IOM a quotation for the cost of the Work Variation.
- 7.4 All Work Variations shall be in writing based on agreed terms by the Parties, and shall be covered by a work variation order (the "**Work Variation Order**") based on the template in Annex F of this Agreement. The Contractor shall immediately implement the terms of the Work Variation Order as agreed by the Parties.
- 7.5 All Work Variation Orders duly signed by both Parties shall automatically form part of this Agreement without need of further amendment, except in the following cases:
- a. In case the increase in the Contract Price exceeds USD 100,000, or exceeds 20% (twenty percent) of the original amount of Contract Price; or
 - b. In case the increase in the Contract Price brings the total aggregate contract value to USD 200,000 or more.

In these cases, a written amendment between Parties shall be required for such changes to form part of this Agreement.

7.6 Under no circumstances shall the Work Variation Order be used to modify or amend any portion of this Agreement not covered under Articles 7.1 and 7.2 above.

8. Bank Guarantee for Advance Payment (IF APPLICABLE)

The Contractor shall provide IOM with a bank guarantee to secure the requested advance payment (the "**Bank Guarantee**") in an amount equivalent to the total amount advanced to be issued by a reputable bank or financial entity acceptable to IOM, based on the template in Annex D, or as otherwise accepted by IOM in writing. The Bank Guarantee shall be effective from the date of the release of cash advance as per Article 4.1 of this Agreement until the date of the provisional acceptance as per Articles 4.7 or 4.8, following which the Bank Guarantee will be released by IOM. IOM shall not be obliged to make any advance payment until the Bank Guarantee is received and approved by IOM. The amount of the Bank Guarantee shall not be construed as the limit of the Contractor's liability to IOM in any event.

9. Performance Security (Applicable where the contract price is over USD 300,000)

The Contractor shall provide IOM with a performance security in the amount equivalent to 10% (ten percent) of the Contract Price, to be issued by a reputable bank or surety company, based on the template in Annex E or in a form acceptable to IOM (the "**Performance Security**"). The Performance Security shall serve as the guarantee for the Contractor's satisfactory performance and compliance with the terms and conditions of this Agreement. The amount of the Performance Security shall not be construed as the limit of the Contractor's liability to IOM in any event. The Performance Security shall be effective from the date of commencement of the Works until the date of Provisional Acceptance as per Articles 4.7 or 4.8 following which it will be discharged by IOM.

10. Retention

- 10.1 Upon issuance of the Certificate of Provisional Acceptance for completed Works as per Article 4.7, an amount equivalent to 10% (ten percent) of the Contract Price shall be retained by IOM ("**Retention Amount**"), to be used for repairs or reconstruction of defective works due to poor workmanship and/or inferior quality of material used which are discovered within a period of 12 (twelve) months from the date of Provisional Acceptance ("**Retention Period**").
- 10.2 In case a Certificate of Provisional Acceptance for terminated Works has been issued as per Article 4.8, an amount equivalent to 10% (ten percent) of the Contract Price corresponding to the Completion Rate as per Article 6.2 shall be retained by IOM as Retention Amount, to be used for repairs and reconstruction of defective works due to poor workmanship and/or inferior quality of material used for which the Contractor was responsible under this Agreement which are discovered within a period of 12 (twelve) months from the date of Provisional Acceptance.
- 10.3 The Contractor may, from the date of Provisional Acceptance and until the expiration of Retention Period, request IOM to release the amount retained as per Article 10.1 or Article 10.2 by submitting an unconditional bank guarantee. Such bank guarantee shall be in a form and by a bank acceptable to IOM and in an amount and currency equal to the amount retained and effective until the expiration of Retention Period.

11. Contractor's Responsibility

- 11.1 All government permits and licenses required for the execution of the Works under this Agreement shall be obtained prior to the commencement of the Works and paid for by the Contractor.
- 11.2 The Contractor shall comply with local and national building regulations imposed by appropriate government agencies, and shall keep IOM indemnified against all fines, penalties and losses incurred by reason of any breach of this clause.
- 11.3 The Contractor shall assume full responsibility for the Works under this Agreement until its final acceptance by IOM as per Article 4.9. The Contractor shall have entire control and supervision of the Works and services herein agreed upon and shall be solely liable for the salaries, wages and other employment benefits of all employees and sub-contractors. Should the Contractor breach this clause, IOM has the right to proceed against the Performance Bond or Bank Guarantee or to use the Retention Amount, without prejudice to demanding direct reimbursement from the Contractor in the event that the amount of the Performance Bond Bank Guarantee or Retention Amount is insufficient.
- 11.4 The Contractor shall be responsible for the safety of all activities on the site and for ensuring that relevant occupational health and safety laws and regulations are followed.
- 11.5 The Contractor shall be solely and fully accountable for any claim for losses, liabilities, injuries, or damages arising out of or in connection with the work done or to be performed under this Agreement including but not limited to any accident or injury of any of its employees or sub-contractors during the term of this Agreement , or for any injury to any person or damages or loss of properties arising from the construction or any act or omission of the Contractor or anyone in its employment, or its subcontractors.
- 11.6 The Contractor shall comply with local laws on wages and such other labor laws including all other laws, orders and regulations of any government authority in connection with the Works.
- 11.7 The Contractor shall at all times defend, indemnify, and hold harmless IOM, its officers, employees, and agents from and against all losses, costs, damages and expenses (including legal fees and costs), claims, suits, proceedings, demands and liabilities of any kind or nature to the extent arising out of or resulting from acts or omissions of the Contractor or its employees, officers, agents or subcontractors, in the performance of this Agreement. IOM shall promptly notify the Contractor of any written claim, loss, or demand for which the Contractor is responsible under this clause.

12. Inspection of Works

- 12.1 IOM reserves the right for itself and its representatives to inspect the Works, while in progress, so as to give IOM the opportunity to reject the whole or any portion thereof, which in the opinion of IOM's representative is defective or substandard.
- 12.2 The Contractor shall allow the Project Manager and other IOM representatives to access to the work site at any time.

13. Insurance

- 13.1 Without limiting the Contractor's liability pursuant to Article 11 (Contractor's Responsibility), the following insurance cover is to be provided and maintained by the Contractor for the entire duration of this Agreement:
- (a) Third party liability for any one claim or series of claims arising out of any one accident or event;
 - (b) Workmen's compensation and/or employer's liability insurance which complies with applicable legislation;
 - (c) Automobile public liability and property damage insurance; and
 - (d) Cover against loss or damage to the Works and materials during the construction.
- 13.2 The amount of coverage for each type of insurance is to be in line with relevant industry standards and in an amount acceptable to IOM.
- 13.3 Policies and certificates of insurance are to be provided to IOM prior to the commencement of the Works.

14. Warranties

- 14.1 The Contractor represents and warrants that it is financially sound and duly licensed, with the adequate labor/human resources, equipment and tools, competence, expertise and skills necessary to carry out fully and satisfactorily, within the stipulated completion period, the Works in accordance with this Agreement.
- 14.2 The Contractor guarantees and warrants the performance and completion of the design and construction work to the full and complete satisfaction of IOM. The Contractor remains responsible for the damages caused or identified within 12 (twelve) months from the date of issue of IOM's Certificate of Provisional Acceptance of the Works as per Articles 4.7 or 4.8, on account of defects in the construction, or the use of materials of inferior quality furnished by it, or due to any violation of the terms of the Agreement.
- 14.3 Any work re-performed by, or any rework, repair or replacement done in satisfaction of the Contractor's obligations in relation to its warranty under this Agreement, shall automatically be re-warranted by Contractor for additional 12 (twelve) months from the completion and provisional acceptance of the rework, repair, or replacement.
- 14.4 In case of any defect in workmanship or materials, which may become apparent in the course of construction, the Contractor shall, within 7 (seven) calendar days from IOM's demand, at Contractor's own cost and expense, remedy such portion of the Works done by the Contractor as in the opinion or judgment of IOM is unsound, incorrect or defective or not in accordance with the plans and specifications.
- 14.5 In case of Contractor's default, failure or refusal to carry out such order to remove and replace the unsound, incorrect or defective portion of the Works within 7 (seven) days as required by the previous clause, IOM may terminate this Agreement and/or engage the services of other persons to carry out the same. The Contractor shall bear all expenses arising there from or incidental thereto. IOM may require direct reimbursement for the cost of such action from the Contractor, deduct the expenses from any amount due to the Contractor, or deduct the amount from Performance Bond, the Bank Guarantee or the Retention Amount.
- 14.6 If any defects or imperfections are discovered by IOM and communicated to the Contractor after provisional acceptance but prior to final acceptance of the Works due to defective or improper workmanship and/or inferior quality of the material used, the Contractor shall immediately correct such defects within a period of 5 (five) days of receipt of written notice from IOM. Where the Contractor fails to act within this period, IOM may engage

the services of a third party to correct the defect and hold the Contractor liable for the cost of such services. In such circumstances the Contractor shall reimburse IOM the cost of such repair, with interest at 2% (two percent) per month from the time such expenses were incurred until fully reimbursed. The Performance Bond, Bank Guarantee and Retention Amount, if not yet released at the time the said defects are found, may be used for this purpose.

14.7 The Contractor shall perform repair work with the utmost care and diligence to protect existing facilities and prevent damage thereto. In the event that damage to existing facilities is caused by such repairs, the Contractor shall repair such damage at its own expense and to IOM's satisfaction and acceptance.

14.8 The Contractor further warrants that:

- (a) It shall comply with all applicable laws, ordinances, rules and regulations when performing its obligations under this Agreement;
- (b) In all circumstances it shall act in the best interests of IOM;
- (c) No official or employee of IOM or any third party has received from, will be offered by, or will receive from the Contractor any direct or indirect benefit arising from the Agreement or award thereof;
- (d) It has not misrepresented or concealed any material facts in the procuring of this Agreement;
- (e) All materials used are new, legally sourced and fit for their particular purpose;
- (f) No asbestos or any other health hazard materials (lead paints etc.) will be used in the course of the construction;
- (g) The Contractor, its staff or shareholders have not previously been declared by IOM ineligible to be awarded agreements by IOM;
- (h) It will maintain reasonable and appropriate organizational, administrative, physical, and technical safeguards to ensure the integrity and confidentiality of the information shared pursuant to this Agreement. The safeguards shall be designed to protect against any foreseeable threats or risks to the security and integrity of such information as well as the unauthorized access, use or disclosure thereof. If requested by IOM at any time during the term of this Agreement, the Contractor shall provide IOM with copies of its policies, protocols, records, and other relevant materials implementing the safeguards;
- (i) The Contract Price specified in this Agreement shall constitute the sole remuneration in connection with this Agreement. The Contractor shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or the discharge of its obligations thereunder. The Contractor shall ensure that any subcontractors, as well as the officers, personnel and agents of either of them, similarly, shall not receive any such additional remuneration;
- (j) It shall respect the legal status, privileges and immunities of IOM as an intergovernmental organization, such as inviolability of documents and archive wherever it is located, exemption from taxation, immunity from legal process or national jurisdiction. In the event that the Contractor becomes aware of any situation where IOM's legal status, privileges or immunities are not fully respected, it shall immediately inform IOM;
- (k) It is not included in the most recent United Nations Security Council Consolidated List nor is it the subject of any sanctions or other temporary suspension. The Contractor will disclose to IOM if it becomes subject to any sanction or temporary suspension during the term of this Agreement;
- (l) It must not employ, provide resources to, support, contract or otherwise deal with any person, entity or other group associated with terrorism as per the most recent United Nations Security Council Consolidated List and all other applicable anti-terrorism legislation. If, during the term of this Agreement, the Contractor determines there are allegations or suspicions that funds transferred to it in accordance with this Agreement have been used to provide support or assistance to individuals or entities associated with terrorism, it will inform IOM immediately who in consultation with the donors as appropriate, shall determine an appropriate response. The Contractor shall ensure that this requirement is included in all subcontracts.

14.9 The Contractor warrants that it shall abide by the highest ethical standards in the performance of this Agreement, which includes not engaging in any fraudulent, corrupt, discriminatory or exploitative practice or practice inconsistent with the rights set forth in the Convention on the Rights of the Child. The Contractor shall immediately inform IOM of any allegation or suspicion that the following practice may have occurred or exist:

- (a) fraudulent practice, defined as any act or omission, including misrepresentation or concealment, that knowingly or recklessly misleads, or attempts to mislead, a natural or legal person in the procurement process or the execution of a contract party to obtain a financial gain or other benefit, or to avoid an obligation or in such a way as to cause a detriment to IOM;
- (b) corrupt practice defined as the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another natural or legal person in the procurement process or in contract execution, such as through bribery;
- (c) collusive practice defined as an arrangement between two or more bidders, or other natural or legal persons designed to achieve an improper purpose, including influencing improperly the actions of another natural or legal person or artificially altering the results of the procurement process to obtain a financial gain or other benefit;
- (d) coercive practice defined as impairing or harming, or threatening to impair or harm, directly or indirectly, any natural or legal person or the property of any such person to influence improperly its actions or impact the execution of a contract;
- (e) obstructive practice defined as acts or omissions intended to materially impede the exercise of IOM's contractual rights of audit, investigation and/or access to information, including deliberately destroying, falsifying, altering or concealing of evidence material to IOM investigations, or making false statements to IOM investigators in order to materially impede a duly authorized investigation into allegations of fraudulent, corrupt, collusive, coercive or unethical practices; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation;
- (f) unethical practice defined as a practice contrary to the IOM Unified Staff Regulations and Rules or UN Supplier Code of Conduct, such as those relating to conflict of interest, gifts, hospitality, post-employment provisions, abuse of authority, harassment, discriminatory or exploitative practices or practices inconsistent with the rights set forth in the Convention on the Rights of the Child;
- (g) money laundering practice defined as the conversion or transfer of property knowing that such property is derived from any offence(s), for the purpose of concealing or disguising the illicit origin of the property or of assisting any persons who are involved in such offence(s) to evade the legal consequences of their actions. Property shall include, but not be limited to money.

14.10 The Contractor further warrants that it shall:

- (a) Take all appropriate measures to prevent sexual exploitation and sexual abuse (SEA), as those terms are defined in section 1 of ST/SGB/2003/13 (the "SG Bulletin"),⁴ and sexual harassment (SH), as that term is defined in section 1 of the UN System Model Policy on Sexual Harassment,⁵ by its employees or sub-contractors, consultants, interns or volunteers associated with or working on behalf of the Contractor to perform activities under this Agreement ("Associated Personnel");
- (b) accept and follow the standards of conduct listed in section 3 of the SG Bulletin;
- (c) Promptly and confidentially report to IOM any allegations or suspicions of SEA or SH concerning its employees or Associated Personnel; promptly investigate any credible allegations of SEA or SH concerning its employees or Associated Personnel, and inform IOM of the outcome of such investigation; take appropriate corrective measures, including imposing disciplinary measures on any of its employees or Associated Personnel who has committed SEA or SH, and inform IOM of such corrective measures;
- (d) Provide to IOM, on written request, all relevant information to determine whether the Contractor has taken appropriate investigative and corrective action in cases of SEA or SH. Failure to take appropriate investigative or corrective action to the satisfaction of IOM shall constitute material breach of this Agreement;
- (e) Ensure that the SEA and SH provisions contained in this Article are included in all sub-contracts related to this Agreement;
- (f) Adhere to the provisions of this Article for the duration of this Agreement.

14.11 The Contractor expressly acknowledges and agrees that breach by the Contractor, its employees or its Associated Personnel, of any provision contained in Articles 14.8, 14.9, or 14.10 of this Agreement constitutes a

⁴ Secretary-General's Bulletin Special measures for protection from sexual exploitation and sexual abuse dated 9 October 2003, [N0355040.pdf \(un.org\)](#)

⁵ UN System Model Policy on Sexual Harassment, [CEB Model Policy \(unsceb.org\)](#)

material breach of this Agreement and shall entitle IOM to terminate this Agreement immediately on written notice without liability. In the event that IOM determines, whether through an investigation or otherwise, that such a breach has occurred then, in addition to its right to terminate the Agreement, IOM shall be entitled to recover from the Contractor all losses suffered by IOM in connection with such breach.

- 14.12 IOM shall have the right to investigate any allegations (including but not limited to SEA, SH, fraud and corruption) involving the Contractor, its employees or its Associated Personnel, notwithstanding related investigations undertaken by the Contractor or national authorities. The Contractor shall provide its full and timely cooperation with any such investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any such investigations carried out by IOM.
- 14.13 The Contractor's warranty obligation under this Agreement shall remain valid and existing during the warranty period, notwithstanding the handover of the Works by IOM to a third-party, and the Contractor shall remain liable to IOM for any defects in the construction, workmanship, use of substandard materials, or any violation of the terms of the Agreement during such warranty period.

15. Assignment and Subcontracting

- 15.1 The Contractor shall not assign or subcontract the Agreement or any work under this Agreement in whole or in part, unless agreed in writing in advance by IOM. Any subcontract entered into by the Contractor without approval in writing by IOM may be cause for termination of the Agreement.
- 15.2 Notwithstanding a written approval from IOM, the Contractor shall not be relieved of any liability or obligation under this Agreement nor shall it create any contractual relation between any subcontractor and IOM. The Contractor shall include in an agreement with a subcontractor all provisions in this Agreement that are applicable to a subcontractor, including relevant Warranties and Special Provisions, if any. The Contractor remains liable as a primary obligor under this Agreement, and it shall be directly responsible to IOM for any faulty performance under any subcontract. The subcontractor shall have no cause of action against IOM for any breach of the subcontract.

16. Force Majeure

- 16.1 Neither Party will be liable for any delay in performing or failure to perform any of its obligations under this Agreement if such delay or failure is caused by force majeure, which means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, blockade or embargo, strikes, Governmental or state restrictions, natural disaster, epidemic, public health crisis, and any other circumstances which are not caused by nor within the control of the affected Party.
- 16.2 As soon as possible after the occurrence of a force majeure event which impacts the ability of the affected Party to comply with its obligations under this Agreement, the affected Party will give notice and full details in writing to the other Party of the existence of the force majeure event and the likelihood of delay. On receipt of such notice, the unaffected Party shall take such action as it reasonably considers appropriate or necessary in the circumstances, including granting to the affected Party a reasonable extension of time in which to perform its obligations. During the period of force majeure, the affected Party shall take all reasonable steps to minimize damages and resume performance.
- 16.3 IOM shall be entitled without liability to suspend or terminate the Agreement if Contractor is unable to perform its obligations under the Agreement by reason of force majeure. In the event of such suspension or termination, the provisions of the Article on Termination shall apply.

17. Intellectual Property



All intellectual property and other proprietary rights including, but not limited to, patents, copyrights, trademarks, and ownership of data resulting from the performance of the Services shall be vested in IOM, including, without any limitation, the rights to use, reproduce, adapt, publish and distribute any item or part thereof.

18. Independent Contractor

The Contractor, its employees and other personnel as well as its subcontractors and their personnel, if any, shall perform all Works under this Agreement as an independent contractor and not as an employee or agent of IOM.

19. Audit

The Contractor agrees to maintain records, in accordance with sound and generally accepted accounting procedures, of all direct and indirect costs of whatever nature involving transactions related to the provision of services under this Agreement. The Contractor shall make all such records available to IOM or IOM's designated representative at all reasonable times until the expiration of 7 (seven) years after the date of final payment, for inspection, audit, or reproduction. On request, employees of the Contractor shall be available for interview.

20. Confidentiality

- 20.1 All information which comes into the Contractor's possession or knowledge in connection with this Agreement is to be treated as strictly confidential. The Contractor shall not communicate such information to any third party without the prior written approval of IOM. The Contractor shall comply with IOM Data Protection Principles in the event that it collects, receives, uses, transfers, stores or otherwise processes any personal data in the performance of this Agreement. This obligation shall survive the expiration or termination of this Agreement.
- 20.2 Notwithstanding the previous paragraph, IOM may disclose the terms of this Agreement and information related to this Agreement, including but not limited to the name of the Contractor, the title of the contract/project, the nature and purpose of the contract/project, and the amount of the contract/project to the extent required by its donors or auditors or in relation to IOM's reporting mechanisms and commitment to any initiative for transparency and accountability of funding received by IOM provided that such disclosure will be in accordance with the policies, instructions and regulations of IOM.

21. Notices

Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and received by the other Party at the following address:

International Organization for Migration (IOM)

Attn: [Name and title/position of IOM contact person]

[IOM's address]

Email: [IOM's email address]

[Full name of the Contractor]

Attn: [Name and title/position of the Contractor's contact person]

[Contractor's address]

Email: [Contractor's email address]

22. Dispute Resolution

- 22.1 Any dispute, controversy or claim arising out of or in relation to this Agreement, or the breach, termination or invalidity thereof, shall be settled amicably by negotiation between the Parties.
- 22.2 In the event that the dispute, controversy or claim is not resolved by negotiation within 3 (three) months of receipt of the notice from one Party of the existence of such dispute, controversy or claim, either Party may request that it be submitted to mediation in accordance with the UNCITRAL Mediation Rules in effect at the time of the dispute.

- 22.3 In the event that mediation is not successful, either Party may submit the dispute, controversy or claim to arbitration in accordance with the UNCITRAL Arbitration Rules in effect at the time of the dispute no later than 3 (three) months following the date of termination of the mediation as per Article 9 of the UNCITRAL Mediation Rules. The number of arbitrators shall be one and the language to be used in the arbitral proceedings shall be English. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The arbitral tribunal shall have no authority to award punitive damages. The seat of the arbitration shall be Geneva, Switzerland.
- 22.4 All aspects of the dispute resolution as per paragraphs 1 to 3 of this Article shall be treated as confidential by the Parties and all others involved.
- 22.5 The present Agreement as well as the arbitration agreement above shall be governed by the terms of the present Agreement and supplemented by internationally accepted general principles of law (including the UNIDROIT Principles of International Commercial Contracts) for issues not covered by the Agreement, to the exclusion of any single national system of law that would defer the Agreement to the laws of any given jurisdiction.
- 22.6 This Article survives the expiration or termination of the present Agreement.

23. Use of IOM Name, Abbreviation and Emblem

The Contractor shall not be entitled to use the name, abbreviation or emblem of IOM without IOM's prior written authorisation. The Contractor acknowledges that use of the IOM name, abbreviation and emblem is strictly reserved for the official purposes of IOM and protected from unauthorized use by Article 6^{ter} of the Paris Convention for the Protection of Industrial Property, revised in Stockholm in 1967 (828 UNTS 305 (1972)).

24. Status of IOM

Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the International Organization for Migration.

25. No Waiver Clause

IOM's failure to insist upon a strict performance of any of the terms and conditions of this Agreement shall not be deemed a relinquishment of any right or remedy that IOM may have, nor shall it be construed as a waiver of Contractor's subsequent breach of this Agreement which shall continue to be in full force and effect. No waiver by IOM of any of its rights under this Agreement shall be deemed to have been made unless expressed in writing and signed by IOM.

26. Termination of Agreement

- 26.1 IOM may, at its option, terminate for convenience any of the work under this Agreement in whole or in part, at any time by 7 (seven) days written notice to Contractor. Such notice shall specify the Completion Rate upon termination as established by Article 6.2 and the effective date of termination. Upon receipt of such notice Contractor shall:
- (a) Immediately discontinue the Works on the date and to the extent specified in the notice and place no further purchase orders or subcontracts for materials, services, or facilities other than as may be required for completion of such portion of the Works that is not terminated;
 - (b) Promptly cancel upon terms satisfactory to IOM all purchase orders, subcontracts, rentals, or any other agreement existing for the performance of the terminated work, or assign those agreements as directed by IOM;
 - (c) Assist IOM in the maintenance and protection of work in progress, plant, tools, equipment, property and materials acquired by Contractor or furnished by IOM under this Agreement;
 - (d) Complete performance of such portion of the Works which are not terminated; and
 - (e) Perform other related tasks, which IOM may reasonably instruct, in order to effect the termination of the work.
- 26.2 Upon termination as per the previous clause, as the sole right and remedy of Contractor, IOM shall pay in accordance with the following:

- (a) The Contract Price corresponding to the Works performed in accordance with this Agreement prior to the date of such notice of termination;
- (b) Costs corresponding to the portion of the Works thereafter performed as specified in such notice of termination, subject to IOM's acceptance of such part of the Works;
- (c) Reasonable and documented administrative costs of settling and paying claims arising out of the termination of work under purchase orders or subcontracts, as agreed by IOM; and
- (d) Reasonable costs incurred in demobilization and the disposition of residual material and equipment, as agreed by IOM.

The Contractor shall submit within 7 (seven) calendar days after receipt of notice of termination, a written statement setting forth its proposal for an adjustment to the Contract Price to include only the incurred costs described in this clause. IOM shall review the proposal, and negotiate an equitable adjustment of the Contract Price. Other amounts paid in advance by IOM will be refunded by the Contractor within 7 (seven) days.

- 26.3 IOM may terminate this Agreement or any of the work under this Agreement at any time by immediate written notice to the Contractor, for causes which include but are not limited to:
- (a) The Contractor's violation of the terms and conditions of this Agreement;
 - (b) Contractor's default, failure or refusal to carry out order to remove and replace the unsound, incorrect or defective portion of the Works as per Article 14.5;
 - (c) Non-completion of the Works within the time agreed upon or the expiration of extension agreed upon, or delayed progress of the Works as stated in Article 6 or sub-standard work;
 - (d) Institution of insolvency or receivership proceedings involving the Contractor;
 - (e) If, in the judgment of IOM, the Contractor has engaged in corrupt or fraudulent practices in competing for and/or implementing the Agreement.

The written notice shall specify the Completion Rate as established by Article 6.2 upon termination, the effective date of termination, and any additional tasks that need to be performed including but not limited to those enumerated in Articles 26.1 and 26.2. Such termination shall be without prejudice to IOM's other rights and remedies in this Agreement, in law and in equity. Amounts paid in advance by IOM will be refunded by the Contractor within 7 (seven) days from the date of IOM's request.

26.4 Where IOM terminates this Agreement as per Article 26.3 above, all materials, plant, equipment and works financed under this Agreement shall be deemed to be the property of IOM, and the Contractor shall be liable for all the direct replacement cost incurred to IOM for the completion of the Works. The Contractor shall pay IOM the required amount within 30 (thirty) days from receipt of an invoice from IOM. The direct replacement cost shall be the difference between the remaining amount in Contract Price not paid to the Contractor upon termination including the Retention Amount (after the settlement of all remaining debts and obligations) and the actual cost spent by IOM for completion of the remainder of the Works plus overhead of 10% (ten percent) for additional administrative efforts of IOM.

- 26.5 Upon any termination, the Contractor shall waive any claims for damages including loss of anticipated profits on account thereof.
- 26.6 IOM may suspend the Agreement at any time, in whole or in part. In the event of suspension of this Agreement, IOM will specify the scope of activities and/or deliverables that shall be suspended in writing. All other rights and obligations of this Agreement shall remain applicable during the period of suspension. IOM will notify the Contractor in writing when the suspension is lifted and may modify the completion date. The Contractor shall not be entitled to claim or receive any additional payment or costs incurred during the period of suspension of this Agreement.

27. Severability

If any part of this Agreement is found to be invalid or unenforceable, that part will be severed from this Agreement and the remainder of the Agreement shall remain in full force.

28. Entire Agreement



This Agreement including its Annexes represents the entire agreement between the Parties and supersedes all prior agreements and understandings, if any, relating to the subject matter of this Agreement.

29. Final Clauses

- 29.1 This Agreement will enter into force upon signature by both Parties. It will remain in force until completion of all obligations of the Parties under this Agreement unless terminated earlier in accordance with the Article on Termination.
- 29.2 Except as provided under Article 7 above, any change to the terms and conditions detailed herein shall be documented in a written amendment to this Agreement.

30. Special Provisions (Optional)

Due to the requirements of the Donor financing the Project, the Contractor shall agree and accept the following provisions:

[Insert all donor requirements which must be flowed down to IOM’s implementing partners and subcontractors. In case of any doubt, please contact LEGContracts@iom.int]

Signed in duplicate in English, on the dates and at the places indicated below.

For and on behalf of
The International Organization for Migration

For and on behalf of
[Name of Contractor]

Signature

Signature

Name:
Position:
Date:
Place:

Name:
Position:
Date:
Place:

6.2 Performance Security Template (Bank Guarantee)

PERFORMANCE SECURITY TEMPLATE

Performance Security (Bank Guarantee)

To: *[name and address of IOM Office]*

WHEREAS *[name and address of Contractor]* (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. *[number]* dated *[date]* to execute *[name of Contract and brief description of Works, Services, or Goods]* (hereinafter called “the Contract”);

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Performance Security by a recognized bank for the sum specified therein as security for compliance with its obligations in accordance with the Contract (the “Performance Security”);

AND WHEREAS we have agreed to give the Contractor such a Performance Security;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of *[amount of Guarantee] [amount in words]* (“*Guarantee Amount*”), such sum being payable in the types and proportions of currencies in which the Contract Price (as defined in the Contract) is payable, and we undertake to pay you, immediately upon your first written demand and without cavil or argument, any sum or sums within the limits of *the Guarantee Amount* as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein. We further undertake to indemnify you for any cost, loss or liability incurred by you as a result of our failure to comply with the terms of this Performance Security.

We hereby waive the necessity of your demanding the said debt from the Contractor or from any other party before presenting us with the demand. We further confirm you do not need to proceed against or enforce any other rights or security or claim payment from any person before claiming under this Performance Security.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works, Services or Goods (each as defined in the Contract) 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 Performance Security, and we hereby waive notice of any such change, addition, or modification.

This Performance Security shall be valid until *[insert the date by which the vendor should complete all the services as indicated in the contract]*. Any claims hereunder must be submitted to us not later than the said expiry date, after which date this Performance Security automatically becomes null and void.

Nothing in or relating to this Performance Security shall be deemed a waiver, express or implied, of any of the privileges and immunities of the International Organization for Migration as an intergovernmental organization.

Signature and seal of the Guarantor:

Name and position of signatory:
Name of Bank/ Financial Institution:
Address:
Date:

Annex 1: Terms of Reference (TOR) and relevant annexes (Annex 1A to 1G)

Annex 1A. Design Drawings

Annex 1B. Bill of Quantities

Annex 1C. Guideline for Standards on Workmanship and Materials

Annex 1D. ECRP IOM Project Health and Safety Management Plan (HSMP)

Annex 1E. ECRP IOM Quality Management Plan (QMP)

Annex 1F. ECRP Environmental and Social Management Plan (C-ESMP)

Annex 1G. ECRP Labour Management Procedure (extract from ESMP)

SECTION 7: BIDDING FORMS

Form A: Bid Confirmation

Form B: Checklist

Form C: Bid Submission

Form D: Bidder Information

Form E: Joint Venture / Consortium / Association Information

Form F: Eligibility and Qualification

Form G: Technical Bid

Form H: Price Schedule

Form I: Bid Security

Form J: Key Supervisory Staff Schedule

Form K: Equipment Schedule

Form L: Construction Schedule

[These documents are enclosed separately](#)